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2D SESSION

H. R. 4173

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2010

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Wall Street Reform
3 and Consumer Protection Act of 2009”.

4 SEC. 2. TABLE OF CONTENTS.

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Sec. 10201. Regulation of credit for reinsurance and reinsurance agreements.

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Sec. 10301. Rule of construction.

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TITLE X—INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED

Sec. 11001. Interest-bearing transaction accounts authorized.

1 **TITLE I—FINANCIAL STABILITY** 2 **IMPROVEMENT ACT**

3 **SEC. 1000. SHORT TITLE; DEFINITIONS.**

4 (a) SHORT TITLE.—This title may be cited as the
5 “Financial Stability Improvement Act of 2009”.

6 (b) DEFINITIONS.—For purposes of this title, the fol-
7 lowing definitions shall apply:

8 (1) The term “Board” means the Board of
9 Governors of the Federal Reserve System.

1 (2) The term “Council” means the Financial
2 Services Oversight Council established under section
3 1001.

4 (3) The term “Federal financial regulatory
5 agency” means any agency that has a voting mem-
6 ber of the Council as set forth in section 1001(b)(1).

7 (4) The term “financial company” means a
8 company or other entity—

9 (A) that is—

10 (i) incorporated or organized under
11 the laws of the United States or any State,
12 territory, or possession of the United
13 States, the District of Columbia, Common-
14 wealth of Puerto Rico, Commonwealth of
15 Northern Mariana Islands, Guam, Amer-
16 ican Samoa, or the United States Virgin
17 Islands; or

18 (ii) a company incorporated in or or-
19 ganized in a country other than the United
20 States that has significant operations in
21 the United States (hereafter in this title
22 referred to as a “foreign financial parent”)
23 after through—

24 (I) a Federal or State branch or
25 agency of a foreign bank as such

1 terms are defined in the International
2 Banking Act of 1978 (12 U.S.C. 3101
3 et seq.); or

4 (II) a United States affiliate or
5 other United States operating entity;

6 (B) that is, in whole or in part, directly or
7 indirectly, engaged in financial activities; and

8 (C) that is not a Farm Credit System in-
9 stitution chartered under and subject to the
10 provisions of the Farm Credit Act of 1971, as
11 amended (12 U.S.C. 2001 et seq.).

12 (5) FINANCIAL HOLDING COMPANY SUBJECT TO
13 STRICTER STANDARDS.—The term “financial holding
14 company subject to stricter standards” means—

15 (A) a financial company that has been sub-
16 jected to stricter prudential standards under
17 subtitle B; or

18 (B) in the case of a financial company de-
19 scribed in subparagraph (A) that is required to
20 establish an intermediate holding company
21 under section 6 of the Bank Holding Company
22 Act, the section 6 holding company through
23 which the financial company is required to con-
24 duct its financial activities.

1 (6) The term “primary financial regulatory
2 agency” means the following:

3 (A) The Comptroller of the Currency, with
4 respect to any national bank, any Federal
5 branch or Federal agency of a foreign bank,
6 and, after the date on which the functions of
7 the Office of Thrift Supervision and the Direc-
8 tor of the Office of Thrift Supervision are
9 transferred under subtitle C, a Federal savings
10 association.

11 (B) The Board, with respect to—

12 (i) any State member bank;

13 (ii) any bank holding company and
14 any subsidiary of such company (as such
15 terms are defined in the Bank Holding
16 Company Act), other than a subsidiary
17 that is described in any other subpara-
18 graph of this paragraph to the extent that
19 the subsidiary is engaged in an activity de-
20 scribed in such subparagraph;

21 (iii) any financial holding company
22 subject to stricter standards and any sub-
23 sidiary (as such term is defined in the
24 Bank Holding Company Act) of such com-
25 pany, other than a subsidiary that is de-

1 scribed in any other subparagraph of this
2 paragraph to the extent that the subsidiary
3 is engaged in an activity described in such
4 subparagraph;

5 (iv) after the date on which the func-
6 tions of the Office of Thrift Supervision
7 are transferred under subtitle C, any sav-
8 ings and loan holding company (as defined
9 in section 10(a)(1)(D) of the Home Own-
10 ers' Loan Act) and any subsidiary (as such
11 term is defined in the Bank Holding Com-
12 pany Act of 1956) of such company, other
13 than a subsidiary that is described in any
14 other subparagraph of this paragraph, to
15 the extent that the subsidiary is engaged
16 in an activity described in such subpara-
17 graph;

18 (v) any organization organized and
19 operated under section 25 or 25A of the
20 Federal Reserve Act (12 U.S.C. 601 et
21 seq. or 611 et seq.); and

22 (vi) any foreign bank or company that
23 is treated as a bank holding company
24 under subsection (a) of section 8 of the
25 International Banking Act of 1978 and

1 any subsidiary (other than a bank or other
2 subsidiary that is described in any other
3 subparagraph of this paragraph) of any
4 such foreign bank or company.

5 (C) The Federal Deposit Insurance Cor-
6 poration, with respect to any State nonmember
7 bank, any insured State branch of a foreign
8 bank (as such terms are defined in section 3 of
9 the Federal Deposit Insurance Act), and, after
10 the date on which the functions of the Office of
11 Thrift Supervision are transferred under sub-
12 title C, any State savings association.

13 (D) The National Credit Union Adminis-
14 tration, with respect to any insured credit union
15 under the Federal Credit Union Act (12 U.S.C.
16 1751 et seq.).

17 (E) The Securities and Exchange Commis-
18 sion, with respect to—

19 (i) any broker or dealer registered
20 with the Securities and Exchange Commis-
21 sion under the Securities Exchange Act of
22 1934 (15 U.S.C. 78a et seq.);

23 (ii) any investment company reg-
24 istered with the Securities and Exchange
25 Commission under the Investment Com-

pany Act of 1940 (15 U.S.C. 80a–1 et seq.);

(iii) any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) with respect to the investment advisory activities of such company and activities incidental to such advisory activities;

(iv) any clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934);

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vi) any exchange registered as a national securities exchange with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(vii) any credit rating agency registered with the Securities and Exchange

Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(viii) any securities information processor registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(ix) any transfer agent registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(F) The Commodity Futures Trading Commission, with respect to—

(i) any futures commission merchant, any commodity trading adviser, any retail foreign exchange dealer, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to the commodities activities of such entity and activities incidental to such commodities activities; and

(ii) any derivatives clearing organization, designated contract market, or swap

1 execution facility (as defined in the Com-
2 modity Exchange Act).

3 (G) The Federal Housing Finance Agency
4 with respect to the Federal National Mortgage
5 Association, the Federal Home Loan Mortgage
6 Corporation, and the Federal home loan banks.

7 (H) The State insurance authority of the
8 State in which an insurance company is domi-
9 ciled, with respect to the insurance activities
10 and activities incidental to such insurance ac-
11 tivities of an insurance company that is subject
12 to supervision by the State insurance authority
13 under State insurance law.

14 (I) The Office of Thrift Supervision, with
15 respect to any Federal savings association,
16 State savings association, or savings and loan
17 holding company, until the date on which the
18 functions of the Office of Thrift Supervision are
19 transferred under subtitle C.

20 (7) TERMS DEFINED IN OTHER LAWS.—

21 (A) AFFILIATE.—The term “affiliate” has
22 the meaning given such term in section 2(k) of
23 the Bank Holding Company Act of 1956.

24 (B) STATE MEMBER BANK, STATE NON-
25 MEMBER BANK.—The terms “State member

1 bank” and “State nonmember bank” have the
2 same meanings as in subsections (d)(2) and
3 (e)(2), respectively, of section 3 of the Federal
4 Deposit Insurance Act.

5 **SEC. 1000A. RESTRICTIONS ON THE FEDERAL RESERVE**
6 **SYSTEM PENDING AUDIT REPORT.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, the Comptroller General of the United States
9 shall perform an audit of all actions taken by the Board
10 of Governors of the Federal Reserve System and the Fed-
11 eral reserve banks during the current economic crisis pur-
12 suant to the authority granted under section 13(c) of the
13 Federal Reserve Act. Such audit shall be completed as ex-
14 peditiously as possible, but no later than 2 years, after
15 the date of the enactment of the Financial Stability Im-
16 provement Act of 2009.

17 (b) REPORT.—

18 (1) REQUIRED.—Not later than the end of the
19 90-day period beginning on the date the audit re-
20 ferred to in subsection (a) is completed, the Comp-
21 troller General of the United States shall submit a
22 report to the Congress, and make such report avail-
23 able to the public.

24 (2) CONTENTS.—The report under paragraph
25 (1) shall include a detailed description of the find-

8 SEC. 1001. FINANCIAL SERVICES OVERSIGHT COUNCIL ES-
9 TABLISHED.

13 (b) MEMBERSHIP.—The Council shall consist of the
14 following:

(A) The Secretary of the Treasury, who shall serve as the Chairman of the Council.

19 (B) The Chairman of the Board of Gov-
20 ernors of the Federal Reserve System.

21 (C) The Comptroller of the Currency.

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1 (E) The Chairman of the Securities and
2 Exchange Commission.

3 (F) The Chairman of the Commodity Fu-
4 tures Trading Commission.

5 (G) The Chairperson of the Federal De-
6 posit Insurance Corporation.

7 (H) The Director of the Federal Housing
8 Finance Agency.

9 (I) The Chairman of the National Credit
10 Union Administration.

11 (J) The head of the Consumer Financial
12 Protection Agency.

13 (2) NONVOTING MEMBERS.—Nonvoting mem-
14 bers, who shall serve in an advisory capacity and
15 shall not be excluded from any of the Council's pro-
16 ceedings, meetings, discussions, and deliberations:

17 (A) The Director of the Federal Insurance
18 Office.

19 (B) A State insurance commissioner, to be
20 designated by a selection process determined by
21 the State insurance commissioners, provided
22 that the term for which a State insurance com-
23 missioner may serve shall last no more than the
24 2-year period beginning on the date that the
25 commissioner is selected.

1 (C) A State banking supervisor, to be des-
2 ignated by a selection process determined by
3 the State bank supervisors, provided that the
4 term for which a State banking supervisor may
5 serve shall last no more than the 2-year period
6 beginning on the date that the supervisor is se-
7 lected.

8 (D) A State securities commissioner (or an
9 officer performing like functions), to be des-
10 ignated by a selection process determined by
11 such State securities commissioners, provided
12 that the term for which a State securities com-
13 missioner may serve shall last no more than the
14 2-year period beginning on the date that the
15 commissioner is selected.

16 (c) DUTIES.—The Council shall have the following
17 duties:

18 (1) To advise the Congress on financial domes-
19 tic and international regulatory developments, in-
20 cluding insurance and accounting developments, and
21 make recommendations that will enhance the integ-
22 rity, efficiency, competitiveness, and stability of the
23 United States financial markets.

1 (2) To monitor the financial services market-
2 place to identify potential threats to the stability of
3 the United States financial system.

4 (3) To identify potential threats to the stability
5 of the United States financial system that do not
6 arise out of the financial services marketplace.

7 (4) To develop strategies (and conduct exercises
8 in furtherance of those strategies) to prepare for po-
9 tential threats identified under paragraphs (2) and
10 (3). In doing so, the Council shall collaborate with
11 participants in the financial sector, financial sector
12 coordinating councils, and any other parties the
13 Council determines to be appropriate.

14 (5) To subject financial companies and financial
15 activities to stricter prudential standards in order to
16 promote financial stability and mitigate systemic
17 risk in accordance with subtitle B.

18 (6) To issue formal recommendations that a
19 Council member agency adopt stricter prudential
20 standards for firms it regulates to mitigate systemic
21 risk in accordance with subtitle B of this title.

22 (7) To monitor international regulatory develop-
23 ments, including both insurance and accounting de-
24 velopments, and to identify those developments that
25 may conflict with the policies of the United States

1 or place United States financial services firms or
2 United States financial markets at a competitive dis-
3 advantage.

4 (8) To facilitate information sharing and co-
5 ordination among the members of the Council re-
6 garding financial services policy development,
7 rulemakings, examinations, reporting requirements,
8 and enforcement actions.

9 (9) To provide a forum for discussion and anal-
10 ysis of emerging market developments and financial
11 regulatory issues among its members.

12 (10) At the request of an agency that is a
13 Council member, to resolve a jurisdictional dispute
14 between that agency and another agency that is a
15 Council member in accordance with section 1002.

16 (11) To review and submit comments to the Se-
17 curities and Exchange Commission and any stand-
18 ards setting body with respect to an existing or pro-
19 posed accounting principle, standard, or procedure.

20 **SEC. 1002. RESOLUTION OF DISPUTES AMONG FEDERAL FI-**
21 **NANCIAL REGULATORY AGENCIES.**

22 (a) REQUEST FOR DISPUTE RESOLUTION.—The
23 Council shall resolve a dispute among 2 or more Federal
24 financial regulatory agencies if—

1 (1) a Federal financial regulatory agency has a
2 dispute with another Federal financial regulatory
3 agency about the agencies' respective jurisdiction
4 over a particular financial company or financial ac-
5 tivity or product (excluding matters for which a dis-
6 pute mechanism specifically has been provided under
7 section 4204 or title III);

8 (2) the disputing agencies cannot, after a dem-
9 onstrated good faith effort, resolve the dispute
10 among themselves; and

11 (3) any of the Federal financial regulatory
12 agencies involved in the dispute—

13 (A) provides all other disputants prior no-
14 tice of its intent to request dispute resolution
15 by the Council; and

16 (B) requests in writing, no earlier than 14
17 days after providing the notice described in
18 paragraph (A), that the Council resolve the dis-
19 pute.

20 (b) COUNCIL DECISION.—The Council shall decide
21 the dispute—

22 (1) within a reasonable time after receiving the
23 dispute resolution request;

24 (2) after consideration of relevant information
25 provided by each party to the dispute; and

1 (3) by agreeing with 1 of the disputants regard-
2 ing the entirety of the matter or by determining a
3 compromise position.

4 (c) FORM AND BINDING EFFECT.—A Council deci-
5 sion under this section shall be in writing and include an
6 explanation and shall be binding on all Federal financial
7 regulatory agencies that are parties to the dispute.

8 **SEC. 1003. TECHNICAL AND PROFESSIONAL ADVISORY**
9 **COMMITTEES.**

10 The Council is authorized to appoint—

11 (1) subsidiary working groups composed of
12 Council members and their staff, Council staff, or a
13 combination; and

14 (2) such temporary special advisory, technical,
15 or professional committees as may be useful in car-
16 rying out its functions, which may be composed of
17 Council members and their staff, other persons, or
18 a combination.

19 **SEC. 1004. FINANCIAL SERVICES OVERSIGHT COUNCIL**
20 **MEETINGS AND COUNCIL GOVERNANCE.**

21 (a) MEETINGS.—The Council shall meet as fre-
22 quently as the Chairman deems necessary, but not less
23 than quarterly.

24 (b) VOTING.—Unless otherwise provided, the Council
25 shall make all decisions the Council is required or author-

1 ized to make by a majority of the total voting membership
2 of the Council under section 1001(b)(1).

3 **SEC. 1005. COUNCIL STAFF AND FUNDING.**

4 (a) VOTING MEMBERS OF THE COUNCIL.—The Sec-
5 retary of the Treasury shall and all other voting members
6 of the Council may, with the approval of the Council—

7 (1) detail permanent staff from the Department
8 of the Treasury to provide the Council (and any
9 temporary special advisory, technical, or professional
10 committees appointed by the Council) with profes-
11 sional and expert support; and

12 (2) provide such other services and facilities
13 necessary for the performance of the Council's func-
14 tions and fulfillment of the duties and mission of the
15 Council.

16 (b) OTHER DEPARTMENTS AND AGENCIES.—In addi-
17 tion to the assistance prescribed in subsection (a), depart-
18 ments and agencies of the United States may, with the
19 approval of the Council—

20 (1) detail department or agency staff on a tem-
21 porary basis to provide additional support to the
22 Council (and any special advisory, technical, or pro-
23 fessional committees appointed by the Council); and

1 (2) provide such services, and facilities as the
2 other departments or agencies may determine advis-
3 able.

4 (c) STAFF STATUS; COUNCIL FUNDING.—

5 (1) STATUS.—Staff detailed to the Council by
6 the Secretary of the Treasury and other United
7 States departments or agencies shall—

8 (A) report to and be subject to oversight
9 by the Council during their assignment to the
10 Council; and

11 (B) be compensated by the department of
12 agency from which the staff was detailed.

13 (2) FUNDING.—The administrative expense of
14 the Council shall be paid by the departments and
15 agencies represented by voting members of the
16 Council on an equal basis.

17 **SEC. 1006. REPORTS TO THE CONGRESS.**

18 (a) IN GENERAL.—Semiannually the Council shall
19 submit a report to the Committee on Ways and Means,
20 the Committee on Agriculture, and the Committee on Fi-
21 nancial Services of the House of Representatives and the
22 Committee on Finance, the Committee on Agriculture,
23 and the Committee on Banking, Housing, and Urban Af-
24 fairs of the Senate, and the Comptroller General of the
25 United States that—

1 (1) describes significant financial and regu-
2 latory developments, including insurance and ac-
3 counting regulations and standards, and assesses the
4 impact of those developments on the stability of the
5 financial system;

6 (2) recommends actions that will improve finan-
7 cial stability;

8 (3) details the size, scale, scope, concentration,
9 activities, and interconnectedness of the 50 largest
10 financial institutions, by total assets, in the United
11 States;

12 (4) describes strategies developed by the Coun-
13 cil to respond to potential threats to the stability of
14 the United States financial system and the outcome
15 of exercises conducted in furtherance of those strate-
16 gies;

17 (5) describes the nature and scope of any com-
18 pany or activities identified under subtitle B and
19 steps taken to address them; and

20 (6) describes any dispute resolutions under-
21 taken under section 1002 and the result of such res-
22 olutions.

23 (b) EVALUATION OF ANNUAL REPORT BY GAO.—
24 Not later than 120 days after receiving the report required
25 by subsection (a), the Comptroller General of the United

1 States shall submit an evaluation of such report to the
2 Committee on Ways and Means, the Committee on Agri-
3 culture, and the Committee on Financial Services of the
4 House of Representatives and the Committee on Finance,
5 the Committee on Agriculture, and the Committee on
6 Banking, Housing, and Urban Affairs of the Senate.

7 (c) STATEMENTS BY VOTING MEMBERS OF THE
8 COUNCIL.—At the time each report is submitted under
9 subsection (a), each voting member of the Council shall—

10 (1) if such member believes that the Council,
11 the Government, and the private sector are taking
12 all reasonable steps to ensure financial stability and
13 to prevent systemic risk that would negatively affect
14 the economy, submit a signed statement to the Com-
15 mittee on Ways and Means, the Committee on Agri-
16 culture, and the Committee on Financial Services of
17 the House of Representatives and the Committee on
18 Finance, the Committee on Agriculture, and the
19 Committee on Banking, Housing, and Urban Affairs
20 of the Senate stating such belief; or

21 (2) if such member does not believe that all rea-
22 sonable steps described under paragraph (1) are
23 being taken, submit a signed statement to the Com-
24 mittee on Ways and Means, the Committee on Agri-
25 culture, and the Committee on Financial Services of

1 the House of Representatives and the Committee on
2 Finance, the Committee on Agriculture, and the
3 Committee on Banking, Housing, and Urban Affairs
4 of the Senate stating what actions such member be-
5 lieves need to be taken in order to ensure that all
6 reasonable steps described under paragraph (1) are
7 taken.

8 (d) TESTIMONY BY THE CHAIRMAN.—The Chairman
9 of the Council shall appear before the Committee on Fi-
10 nancial Services of the House of Representatives and the
11 Committee on Banking, Housing, and Urban Affairs of
12 the Senate at a semi-annual hearing, after the report is
13 submitted under subsection (a)—

14 (1) to discuss the efforts, activities, objectives,
15 and plans of the Council; and

16 (2) to discuss and answer questions concerning
17 such report.

18 (e) STUDY OF EFFECTS CONSUMER FINANCIAL PRO-
19 TECTION AGENCY REGULATIONS AND STANDARDS.—

20 (1) STUDY REQUIRED.—The Council shall con-
21 duct a study of the effects that regulations and
22 standards of the Consumer Financial Protection
23 Agency will have on all covered persons (as such
24 term is defined in section 4002(9)), including non-
25 depository institution covered persons. The Director

1 of the Consumer Financial Protection Agency shall
2 take the findings of the study into account when
3 issuing regulations.

4 (2) VALUE OF NONBANK PRODUCTS.—The
5 study shall include an evaluation and assessment of
6 the appropriateness of using “APR” as a true meas-
7 ure of the value of all nonbank products.

8 (3) SUBMISSION.—Not later than 240 days
9 after the date of the enactment of this Act, the Di-
10 rector of the Consumer Financial Protection Agency
11 shall submit the study to Congress and include any
12 recommendations the Director may have for changes
13 in law and regulations to improve consumer protec-
14 tions and maintain access to credit.

15 **SEC. 1007. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

16 (a) The Federal Advisory Committee Act shall not
17 apply to the Financial Services Oversight Council, or any
18 special advisory, technical, or professional committees ap-
19 pointed by the Council (except that, if an advisory, tech-
20 nical, or professional committee has one or more members
21 who are not employees of or affiliated with the United
22 States government, the Council shall publish a list of the
23 names of the members of such committee).

24 (b) The Council shall not be deemed an “agency” for
25 purposes of any State or Federal law.

1 **SEC. 1008. OVERSIGHT BY GAO.**

2 (a) **AUTHORITY TO AUDIT.**—The Comptroller Gen-
3 eral of the United States may audit the activities and fi-
4 nancial transactions of—

5 (1) the Council; and

6 (2) any person or entity acting on behalf of or
7 under the authority of the Council, to the extent
8 such activities and financial transactions relate to
9 such person's or entity's work for the Council.

10 (b) **ACCESS TO INFORMATION.**—

11 (1) **IN GENERAL.**—Notwithstanding any other
12 provision of law, the Comptroller General of the
13 United States shall have access, upon request and at
14 such reasonable time and in such reasonable form as
15 the Comptroller General may request, to—

16 (A) any records or other information under
17 the control of or used by the Council;

18 (B) any records or other information under
19 the control of a person or entity acting on be-
20 half of or under the authority of the Council, to
21 the extent such records or other information is
22 relevant to an audit under subsection (a); and

23 (C) the officers, directors, employees, fi-
24 nancial advisors, staff, working groups, and
25 agents and representatives of the Council (as
26 related to the agent's or representative's activi-

1 ties on behalf of the Council) at such reasonable
2 times as the Comptroller General may request.

3 (2) CERTAIN INFORMATION SPECIFIED.—Access
4 under paragraph (1) includes access to—

5 (A) information provided to the Council by
6 its voting and nonvoting members under section
7 1101; and

8 (B) the identity of each financial holding
9 company subject to stricter standards.

10 (3) COPIES.—Comptroller General may make
11 and retain copies of such books, accounts, and other
12 records access to which is granted under this provi-
13 sion as the Comptroller General considers appro-
14 priate.

15 (c) PERIODIC EVALUATIONS.—The Comptroller Gen-
16 eral of the United States shall periodically evaluate the
17 processes and activities of the Council and the extent to
18 which the Council is fulfilling its duties under this title.
19 The Comptroller General shall submit to the Committee
20 on Financial Services of the House of Representatives and
21 the Committee on Banking, Housing, and Urban Affairs
22 of the Senate a report on the results of each such evalua-
23 tion.

1 **Subtitle B—Prudential Regulation**
2 **of Companies and Activities for**
3 **Financial Stability Purposes**

4 **SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF**
5 **AGENT ACTING ON BEHALF OF COUNCIL.**

6 For purposes of this subtitle, the Board of Governors
7 of the Federal Reserve System shall act in the capacity
8 of agent for the Council, acting on behalf of the Council.

9 **SEC. 1101. COUNCIL AND BOARD AUTHORITY TO OBTAIN**
10 **INFORMATION.**

11 (a) IN GENERAL.—The Council and the Board are
12 authorized to receive, and may request the production of,
13 any data or information from members of the Council, as
14 necessary—

15 (1) to monitor the financial services market-
16 place to identify potential threats to the stability of
17 the United States financial system;

18 (2) to identify global trends and developments
19 that could pose systemic risks to the stability of the
20 economy of the United States or other economies; or

21 (3) to otherwise carry out any of the provisions
22 of this title, including to ascertain a primary finan-
23 cial regulatory agency's implementation of rec-
24 ommended prudential standards under this subtitle.

1 (b) SUBMISSION BY COUNCIL MEMBERS.—Notwith-
2 standing any provision of law, any voting or nonvoting
3 member of the Council is authorized to provide informa-
4 tion to the Council, and the members of the Council shall
5 maintain the confidentiality of such information.

6 (c) FINANCIAL COMPANY DATA COLLECTION.—

7 (1) IN GENERAL.—The Council or the Board
8 may require the submission of periodic and other re-
9 ports from any financial company solely for the pur-
10 pose of assessing the extent to which a financial ac-
11 tivity or financial market in which the financial com-
12 pany participates, or the company itself, poses a
13 threat to financial stability.

14 (2) MITIGATION OF REPORT BURDEN.—Before
15 requiring the submission of reports from financial
16 companies that are regulated by the primary finan-
17 cial regulatory agencies, the Council or the Board
18 shall coordinate with such agencies and shall, when-
19 ever possible, rely on information already being col-
20 lected by such agencies.

21 (3) MITIGATION REQUIREMENTS IN CASE OF
22 FOREIGN FINANCIAL PARENTS.—Before requiring
23 the submission of reports from a company that is a
24 foreign financial parent, the Council or the Board
25 shall, to the extent appropriate, coordinate with any

1 appropriate foreign regulator of such company and
2 any appropriate multilateral organization and, when-
3 ever possible, rely on information already being col-
4 lected by such foreign regulator or multilateral orga-
5 nizational with English translation.

6 (d) CONSULTATION WITH AGENCIES AND ENTI-
7 TIES.—The Council or the Board, as appropriate, may
8 consult with Federal and State agencies and other entities
9 (including the Federal Insurance Office) to carry out any
10 of the provisions of this subtitle.

11 (e) ADDITIONAL PROVISIONS.—

12 (1) DATA AND INFORMATION SHARING.—The
13 Chairman of the Council, in consultation with the
14 other members of the Council, may—

15 (A) establish procedures to share data and
16 information collected by the Council under this
17 section with the members of the Council;

18 (B) develop an electronic process for shar-
19 ing all information collected by the Council with
20 the Chairman of the Board on a real-time basis;

21 (C) issue any regulations necessary to
22 carry out this subsection; and

23 (D) designate the format in which re-
24 quested data and information must be sub-
25 mitted to the Council, including any electronic,

1 digital, or other format that facilitates the use
2 of such data by the Council in its analysis.

3 (2) APPLICABLE PRIVILEGES NOT WAIVED.—A
4 Federal financial regulator, State financial regu-
5 lator, United States financial company, foreign fi-
6 nancial company operating in the United States, fi-
7 nancial market utility, or other person shall not be
8 compelled to waive and shall not be deemed to have
9 waived any privilege otherwise applicable to any data
10 or information by transferring the data or informa-
11 tion to, or permitting that data or information to be
12 used by—

13 (A) the Council;

14 (B) any Federal financial regulator or
15 State financial regulator, in any capacity; or

16 (C) any other agency of the Federal Gov-
17 ernment (as defined in section 6 of title 18,
18 United States Code).

19 (3) DISCLOSURE EXEMPTION.—Any informa-
20 tion obtained by the Council under this section shall
21 be exempt from the disclosure requirements under
22 section 552 of title 5, United States Code.

23 (4) CONSULTATION WITH FOREIGN GOVERN-
24 MENTS.—Under the supervision of the President,
25 and in a manner consistent with section 207 of the

1 Foreign Service Act of 1980 (22 U.S.C. 3927), the
2 Chairman of the Council, in consultation with the
3 other members of the Council, shall regularly consult
4 with the financial regulatory entities and other ap-
5 propriate organizations of foreign governments or
6 international organizations on matters relating to
7 systemic risk to the international financial system.

8 (5) REPORT.—Not later than 6 months after
9 the date of the enactment of this title, the Chairman
10 of the Council shall report to the Financial Services
11 Committee of the House of Representatives and the
12 Banking, Housing, and Urban Affairs Committee of
13 the Senate the opinion of the Council as to whether
14 setting up an electronic database as described in
15 paragraph (1)(B) would aid the Council in carrying
16 out this section.

17 **SEC. 1102. COUNCIL PRUDENTIAL REGULATION REC-**
18 **COMMENDATIONS TO FEDERAL FINANCIAL**
19 **REGULATORY AGENCIES; AGENCY AUTHOR-**
20 **ITY.**

21 (a) IN GENERAL.—The Council is authorized to issue
22 formal recommendations, publicly or privately, that a Fed-
23 eral financial regulatory agency adopt stricter prudential
24 standards for firms it regulates to mitigate systemic risk.

1 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-
2 ARDS.—

3 (1) A Federal financial regulatory agency spe-
4 cifically may, in response to a Council recommenda-
5 tion under this section or otherwise, impose, require
6 reports regarding, examine for compliance with, and
7 enforce stricter prudential standards and safeguards
8 for the firms it regulates to mitigate systemic risk.
9 This authority is in addition to and does not limit
10 any other authority of the Federal financial regu-
11 latory agencies. Compliance by an entity with ac-
12 tions taken by a Federal financial regulatory agency
13 under this section shall be enforceable in accordance
14 with the statutes governing the respective Federal fi-
15 nancial regulatory agency's jurisdiction over the en-
16 tity as if the agency action were taken under those
17 statutes.

18 (2) APPLYING STANDARDS TO FOREIGN FINAN-
19 CIAL PARENTS.—In applying standards under para-
20 graph (1) to any foreign financial parent, or to any
21 branch of, subsidiary of, or other operating entity
22 related to such foreign financial parent that operates
23 within the United States, the Federal financial regu-
24 latory agency shall—

1 (A) give due regard to the principles of na-
2 tional treatment and equality of competitive op-
3 portunity; and

4 (B) take into account the extent to which
5 the foreign financial parent is subject to com-
6 parable standards on a consolidated basis in the
7 home country of such foreign financial parent
8 that are administered by a comparable foreign
9 supervisory authority.

10 (c) AGENCY NOTICE TO COUNCIL.—A Federal finan-
11 cial regulatory agency shall, within 60 days of receiving
12 a Council recommendation under this section, notify the
13 Council in writing regarding—

14 (1) the actions the Federal financial regulatory
15 agency has taken in response to the Council's rec-
16 ommendation, additional actions contemplated, and
17 timetables therefore; or

18 (2) the reason the Federal financial regulatory
19 agency has failed to respond to the Council's re-
20 quest.

21 **SEC. 1103. SUBJECTING FINANCIAL COMPANIES TO STRICT-**
22 **ER PRUDENTIAL STANDARDS FOR FINANCIAL**
23 **STABILITY PURPOSES.**

24 (a) IN GENERAL.—The Council shall, in consultation
25 with the Board and any other primary financial regulatory

1 agency that regulates the financial company or a sub-
2 sidiary of such company, and, in the case of a financial
3 holding company subject to stricter standards that is an
4 insurance company, the Federal Insurance Office, subject
5 a financial company to stricter prudential standards under
6 this subtitle if the Council determines that—

7 (1) material financial distress at the company
8 could pose a threat to financial stability or the econ-
9 omy; or

10 (2) the nature, scope, size, scale, concentration,
11 and interconnectedness, or mix of the company's ac-
12 tivities could pose a threat to financial stability or
13 the economy.

14 (b) CRITERIA.—In making a determination under
15 subsection (a), the Council shall consider the following cri-
16 teria:

17 (1) The extent of the company's leverage.

18 (2) The extent and nature of the company's off-
19 balance sheet exposures.

20 (3) The extent and nature of the company's
21 transactions and relationships with other financial
22 companies.

23 (4) The company's importance as a source of
24 credit for households, businesses, and State and

1 local governments and as a source of liquidity for
2 the financial system.

3 (5) The company's importance as a source of
4 credit for low-income, minority, or underserved com-
5 munities and the impact the failure of such company
6 would have on the availability of credit in such com-
7 munities.

8 (6) The extent to which assets are simply man-
9 aged and not owned by the financial company and
10 the extent to which ownership of assets under man-
11 agement is diffuse.

12 (7) The nature, scope, and mix of the com-
13 pany's activities.

14 (8) The degree to which the company is already
15 regulated by one or more Federal financial regu-
16 latory agencies or, in the case of a foreign financial
17 parent, the extent to which such foreign parent is
18 subject to prudential standards on a consolidated
19 basis in the home country of such financial parent
20 that are administered and enforced by a comparable
21 foreign supervisory authority.

22 (9) The amount and nature of the company's fi-
23 nancial assets.

1 (10) The amount and nature of the company's
2 liabilities, including the degree of reliance on short-
3 term funding.

4 (11) Any other factors that the Council deems
5 appropriate.

6 (c) NOTIFICATION OF DECISION.—The Board, in an
7 executive capacity on behalf of the Council, shall imme-
8 diately upon the Council's decision notify the financial
9 company by order, which shall be public, that the financial
10 company is subject to stricter prudential standards, as
11 prescribed by the Board in accordance with section 1104.

12 (d) PERIODIC REVIEW AND RESCISSION OF FIND-
13 INGS.—

14 (1) SUBMISSION OF ASSESSMENT.—The Board
15 shall periodically submit a report to the Council con-
16 taining an assessment of whether each company sub-
17 jected to stricter prudential standards should con-
18 tinue to be subject to such standards.

19 (2) REVIEW AND RESCISSION.—The Council
20 shall—

21 (A) review the assessment submitted pur-
22 suant to paragraph (1) and any information or
23 recommendation submitted by members of the
24 Council regarding whether a financial holding

1 company subject to stricter standards continues
2 to merit stricter prudential standards; and

3 (B) rescind the action subjecting a com-
4 pany to stricter prudential standards if the
5 Council determines that the company no longer
6 meets the conditions for being subjected to
7 stricter prudential standards in subsections (a)
8 and (b).

9 (e) APPEAL.—

10 (1) ADMINISTRATIVE.—The Council and the
11 Board, in an executive capacity on behalf of the
12 Council, shall establish a procedure through which a
13 financial company that has been subjected to stricter
14 prudential standards in accordance with this section
15 may appeal being subjected to stricter prudential
16 standards.

17 (2) JUDICIAL REVIEW.—Any financial company
18 which has been subjected to stricter prudential
19 standards may seek judicial review by filing a peti-
20 tion for such review in the United States Court of
21 Appeals for the District of Columbia.

22 (f) EFFECT OF COUNCIL DECISION.—

23 (1) APPLICATION OF FEDERAL LAWS.—

24 (A) APPLICATION OF BANK HOLDING COM-
25 PANY ACT AND FEDERAL DEPOSIT INSURANCE

1 ACT.—A financial company subject to stricter
2 standards that does not own a bank (as defined
3 in section 2 of the Bank Holding Company Act
4 of 1956) and that is not a foreign bank or com-
5 pany that is treated as a bank holding company
6 under section 8 of the International Banking
7 Act of 1978 shall be subject to section 4, sub-
8 sections (b), (c), (d), (e), (f), and (g) of section
9 5, and section 8 of the Bank Holding Company
10 Act of 1956, and section 8 of the Federal De-
11 posit Insurance Act in the same manner and to
12 the same extent as if such financial holding
13 company subject to stricter standards were a
14 bank holding company that has elected to be a
15 financial holding company (as such terms are
16 defined in the Bank Holding Company Act of
17 1956), its subsidiaries were subsidiaries of a
18 bank holding company, and the Board was its
19 appropriate Federal banking agency (as such
20 term is defined under the Federal Deposit In-
21 surance Act).

22 (B) BOARD AUTHORITY.—For purposes of
23 administering and enforcing the provisions of
24 this title, the Board may take any action with
25 respect to a financial holding company subject

to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS
AND SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate a section 6 holding company in accordance with section 6 of the Bank Holding Company Act of 1956 through which it conducts activi-

1 ties of the company that are determined to
2 be financial in nature or incidental thereto
3 under section 4(k) of the such Act; and

4 (ii) such section 6 holding company
5 shall be the financial holding company sub-
6 ject to stricter standards for purposes of
7 this title.

8 (B) EXCEPTIONS FROM SECTION 6 HOLD-
9 ING COMPANY REQUIREMENTS.—

10 (i) GENERAL REQUIREMENT FOR
11 BOARD TO CONSIDER EXCEPTIONS.—Be-
12 fore such time as a financial holding com-
13 pany subject to stricter standards is re-
14 quired to establish or designate a section 6
15 holding company under section 6 of the
16 Bank Holding Company Act, and in con-
17 sultation with the financial holding com-
18 pany subject to stricter standards and any
19 appropriate Federal or State financial reg-
20 ulators (and, in the case of a financial
21 holding company subject to stricter stand-
22 ards that is an insurance company, the
23 Federal Insurance Office)—

24 (I) the Board shall consider
25 whether to grant any of the exemp-

1 tions from the requirements applicable
2 to section 6 holding companies under
3 section 6(a)(6)(A) of the Bank Hold-
4 ing Company Act of 1956, in accord-
5 ance with that provision; and

6 (II) the Board, at the request of
7 a financial holding company subject to
8 stricter standards that is predomi-
9 nantly engaged in activities that are
10 determined to be financial in nature
11 or incidental thereto under section
12 4(k) of the Bank Holding Company
13 Act, shall consider whether to exempt
14 the financial holding company subject
15 to stricter standards from the require-
16 ment to establish a section 6 holding
17 company, taking into consideration
18 paragraph (2)(D), and the extent to
19 which the exemption would: facilitate
20 the extension of credit to individuals,
21 households and businesses; improve
22 efficiency or customer service or result
23 in other public benefits; potentially
24 threaten the safety and soundness of
25 the financial holding company or any

1 of its subsidiaries; potentially increase
2 systemic risk or threaten the stability
3 of the overall financial system; poten-
4 tially result in unfair competition; and
5 potentially have anticompetitive ef-
6 fects that would not be outweighed by
7 public benefits.

8 (ii) BOARD DETERMINATION NOT TO
9 EXEMPT.—

10 (I) IN GENERAL.—If the Board
11 determines not to exempt the financial
12 holding company subject to stricter
13 standards from the requirement to es-
14 tablish a section 6 holding company,
15 the financial holding company subject
16 to stricter standards shall establish a
17 section 6 holding company within 90
18 days after the Board’s determination.

19 (II) EXTENSION OF PERIOD.—
20 The Board may extend the time by
21 which the financial holding company
22 subject to stricter standards is re-
23 quired to establish a section 6 holding
24 company for an additional reasonable

1 period of time, not to exceed 180
2 days.

3 (iii) BOARD DETERMINATION TO EX-
4 EMPT.—

5 (I) IN GENERAL.—If the Board
6 grants the requested exemption from
7 the requirement to establish a section
8 6 holding company, the financial hold-
9 ing company subject to stricter stand-
10 ards shall at all times remain pre-
11 dominantly engaged in activities that
12 are determined to be financial in na-
13 ture or incidental thereto under sec-
14 tion 4(k) of the Bank Holding Com-
15 pany Act of 1956, and shall be the fi-
16 nancial holding company subject to
17 stricter standards for purposes of this
18 title.

19 (II) SUBSEQUENT LOSS OF EX-
20 EMPTION.—Upon a determination by
21 the Board, in consultation with any
22 relevant Federal or State regulators
23 of the financial holding company sub-
24 ject to stricter standards, and, in the
25 case of a financial holding company

1 subject to stricter standards that is an
2 insurance company, the Federal In-
3 surance Office, that the financial
4 holding company subject to stricter
5 standards fails to comply with this
6 subsection, the financial holding com-
7 pany subject to stricter standards
8 shall lose the exemption from the sec-
9 tion 6 holding company requirement
10 and shall establish a section 6 holding
11 company within the time periods de-
12 scribed in clause (ii)(I).

13 (C) ACTIVITIES CONDUCTED ABROAD.—
14 Section 4 of the Bank Holding Company Act of
15 1956 shall not apply to any activities that a for-
16 eign financial holding company subject to strict-
17 er standards conducts solely outside the United
18 States if such activities are conducted solely by
19 a company or other entity that is located out-
20 side the United States.

21 (D) FLEXIBLE APPLICATION.—In applying
22 the activity restrictions and ownership limita-
23 tions of section 4 of the Bank Holding Com-
24 pany Act of 1956 to financial holding compa-
25 nies subject to stricter standards described in

paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

(3) LEVERAGE LIMITATION.—The Board shall require each financial holding company subject to stricter standards to maintain a debt to equity ratio of no more than 15 to 1, and the Board shall issue regulations containing procedures and timelines for how a financial holding company subject to stricter standards with a debt to equity ratio of more than 15 to 1 at the time such company becomes a financial holding company subject to stricter standards shall reduce such ratio.

SEC. 1104. STRICTER PRUDENTIAL STANDARDS FOR CERTAIN FINANCIAL HOLDING COMPANIES FOR FINANCIAL STABILITY PURPOSES.

(a) STRICTER PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—To mitigate risks to financial stability and the economy posed by a financial holding company that has been subjected to stricter prudential standards in accordance with section 1103, the Board, as agent of the Council, shall im-

1 pose stricter prudential standards on such company.
2 Such standards shall be designed to maximize finan-
3 cial stability taking costs to long-term financial and
4 economic growth into account, be heightened when
5 compared to the standards that otherwise would
6 apply to financial holding companies that are not
7 subjected to stricter prudential standards pursuant
8 to this subtitle (including by addressing additional
9 or different types of risks than otherwise applicable
10 standards), and reflect the potential risk posed to fi-
11 nancial stability by the financial holding company
12 subject to stricter standards.

13 (2) STANDARDS.—

14 (A) REQUIRED STANDARDS.—The stricter
15 standards imposed by the Board under this sec-
16 tion shall include—

17 (i) risk-based capital requirements
18 and leverage limits, unless the Board de-
19 termines that such requirements are not
20 appropriate for a financial holding com-
21 pany subject to stricter standards because
22 of such company's activities (such as in-
23 vestment company activities or assets
24 under management) or structure, in which
25 case the Board shall apply other standards

1 that result in appropriately stringent con-
2 trols.

3 (ii) liquidity requirements;

4 (iii) concentration requirements (as
5 specified in subsection (c));

6 (iv) prompt corrective action require-
7 ments (as specified in subsection (e));

8 (v) resolution plan requirements (as
9 specified in subsection (f)); and

10 (vi) overall risk management require-
11 ments.

12 (B) ADDITIONAL STANDARDS.—The
13 heightened standards imposed by the Board
14 under this section also may include short-term
15 debt limits prescribed in accordance with sub-
16 section (d) and any other prudential standards
17 that the Board deems advisable, including tak-
18 ing actions to mitigate systemic risk.

19 (C) CONSULTATION WITH FEDERAL FI-
20 NANCIAL REGULATORY AGENCIES AND THE
21 FEDERAL INSURANCE OFFICE.—The Board, in
22 developing stricter prudential standards under
23 this subsection, shall consult with other Federal
24 financial regulatory agencies with respect to
25 any standard that is likely to have a significant

1 impact on a functionally regulated subsidiary,
2 or a subsidiary depository institution, of a fi-
3 nancial holding company that is subject to
4 stricter prudential standards under this title.
5 With respect to a financial holding company
6 subject to stricter standards that is an insur-
7 ance company or any insurance company sub-
8 sidiary of such a financial holding company
9 subject to stricter standards, the Board shall
10 also consult with the Federal Insurance Office.

11 (3) APPLICATION OF REQUIRED STANDARDS.—

12 In imposing prudential standards under this section,
13 the Board—

14 (A) may differentiate among financial
15 holding companies subject to stricter standards
16 on an individual basis or by category, taking
17 into consideration their capital structure, risk,
18 complexity, financial activities, the financial ac-
19 tivities of their subsidiaries, and any other fac-
20 tors that the Board deems appropriate; and

21 (B) shall take into consideration whether
22 and to what extent a financial holding company
23 subject to stricter standards that is not a bank
24 holding company or treated as a bank holding
25 company owns or controls a depository institu-

tion and shall adapt the prudential standards applied to such company as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which capital requirements are not appropriate.

(4) WELL CAPITALIZED AND WELL MANAGED.—A financial holding company subject to stricter standards shall at all times after it is subject to such standards be well capitalized and well managed as defined by the Board.

(5) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board shall prescribe regulations regarding the application of stricter prudential standards to a foreign financial parent and to a Federal or State branch, subsidiary, or operating entity that is owned or controlled by a foreign financial parent, giving due regard to principles of national treatment and equality of competitive opportunity and taking into account the extent to which the foreign financial parent is subject on a consolidated basis to home country standards comparable to those applied to financial holding companies in the United States.

(6) INCLUSION OF OFF BALANCE SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

1 (A) IN GENERAL.—In the case of any fi-
2 nancial holding company subject to stricter
3 standards, the computation of capital require-
4 ments shall take into account off balance sheet
5 activities for such a company.

6 (B) EXEMPTION.—If the Board determines
7 that an exemption from the requirements under
8 subparagraph (A) is appropriate, the Board
9 may exempt a financial holding company sub-
10 ject to stricter standards from the requirements
11 under subparagraph (A) or any transaction or
12 transactions engaged in by such a company.

13 (C) OFF BALANCE SHEET ACTIVITIES DE-
14 FINED.—For purposes of this paragraph, the
15 term “off balance sheet activities” means a li-
16 ability that is not currently a balance sheet li-
17 ability but may become one upon the happening
18 of some future event, including the following
19 transactions, to the extent they may create a li-
20 ability:

21 (i) Direct credit substitutes in which a
22 bank substitutes its own credit for a third
23 party, including standby letters of credit.

1 (ii) Irrevocable letters of credit that
 2 guarantee repayment of commercial paper
 3 or tax-exempt securities.

4 (iii) Risk participation in bankers' ac-
 5 ceptances.

6 (iv) Sale and repurchase agreements.

7 (v) Asset sales with recourse against
 8 the seller.

9 (vi) Interest rate swaps.

10 (vii) Credit swaps.

11 (viii) Commodity contracts.

12 (ix) Forward contracts.

13 (x) Securities contracts.

14 (xi) Such other activities or trans-
 15 actions as the Board may, by rule, define.

16 (b) PRUDENTIAL STANDARDS AT FUNCTIONALLY
 17 REGULATED SUBSIDIARIES AND SUBSIDIARY DEPOSI-
 18 TORY INSTITUTIONS.—

19 (1) BOARD AUTHORITY TO RECOMMEND STAND-
 20 ARDS.—With respect to a functionally regulated sub-
 21 sidiary (as such term is defined in section 5 of the
 22 Bank Holding Company Act) or a subsidiary deposi-
 23 tory institution of a financial holding company sub-
 24 ject to stricter standards, the Board may rec-
 25 ommend that the relevant Federal financial regu-

latory agency for such functionally regulated subsidiary or subsidiary depository institution prescribe stricter prudential standards on such functionally regulated subsidiary or subsidiary depository institution. Any standards recommended by the Board under this section shall be of the same type as those described in subsection (a)(2) that the Board is required or authorized to impose directly on the financial holding company subject to stricter standards.

(2) AGENCY AUTHORITY TO IMPLEMENT HEIGHTENED STANDARDS AND SAFEGUARDS.—Each Federal financial regulatory agency that receives a Board recommendation under paragraph (1) is authorized to impose, require reports regarding, examine for compliance with, and enforce standards under this subsection with respect to the entities such agency regulates as described in section 1006(b)(6). This authority is in addition to and does not limit any other authority of the Federal financial regulatory agencies. Compliance by an entity with actions taken by a Federal financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective agency's jurisdiction over the entity as if the agency action were taken under those statutes.

1 (3) IMPOSITION OF STANDARDS.—Standards
2 imposed by a Federal financial regulatory agency
3 under this subsection shall be the standards rec-
4 ommended by the Board in accordance with para-
5 graph (1) or any other similar standards that the
6 Board deems acceptable after consultation between
7 the Board and the primary financial regulatory
8 agency and, with respect to an insurance company,
9 the Federal Insurance Office.

10 (4) FEDERAL FINANCIAL REGULATORY AGENCY
11 RESPONSE; NOTICE TO COUNCIL AND BOARD.—A
12 Federal financial regulatory agency shall notify the
13 Council and the Board in writing on whether and to
14 what extent the agency has imposed the stricter pru-
15 dential standards described in paragraph (3) within
16 60 days of the Board’s recommendation under para-
17 graph (1). A Federal financial regulatory agency
18 that fails to impose such standards shall provide
19 specific justification for such failure to act in the
20 written notice from the agency to the Council and
21 Board.

22 (c) CONCENTRATION LIMITS FOR FINANCIAL HOLD-
23 ING COMPANIES SUBJECT TO STRICTER STANDARDS.—

24 (1) STANDARDS.—In order to limit the risks
25 that the failure of any company could pose to a fi-

1 nancial holding company subject to stricter stand-
2 ards and to the stability of the United States finan-
3 cial system, the Board, by regulation, shall prescribe
4 standards that limit the risks posed by the exposure
5 of a financial holding company subject to stricter
6 standards to any other company.

7 (2) LIMITATION ON CREDIT EXPOSURE.—The
8 regulations prescribed by the Board shall prohibit
9 each financial holding company subject to stricter
10 standards from having credit exposure to any unaf-
11 filiated company that exceeds 25 percent of capital
12 stock and surplus of the financial holding company
13 subject to stricter standards, or such lower amount
14 as the Board may determine by regulation to be nec-
15 essary to mitigate risks to financial stability.

16 (3) CREDIT EXPOSURE.—For purposes of this
17 subsection and with respect to a financial holding
18 company subject to stricter standards, the term
19 “credit exposure” to a company means—

20 (A) all extensions of credit to the company,
21 including loans, deposits, and lines of credit;

22 (B) all repurchase agreements and reverse
23 repurchase agreement with the company;

24 (C) all securities borrowing and lending
25 transactions with the company to the extent

1 that such transactions create credit exposure of
2 the financial holding company subject to strict-
3 er standards to the company;

4 (D) all guarantees, acceptances, or letters
5 of credit (including endorsement or standby let-
6 ters of credit) issued on behalf of the company;

7 (E) all purchases of or investment in secu-
8 rities issued by the company;

9 (F) counterparty credit exposure to the
10 company in connection with a derivative trans-
11 action between the financial holding company
12 subject to stricter standards and the company;
13 and

14 (G) any other similar transactions that the
15 Board by regulation determines to be a credit
16 exposure for purposes of this section.

17 (4) **ATTRIBUTION RULE.**—For purposes of this
18 subsection, any transaction by a financial holding
19 company subject to stricter standards with any per-
20 son is deemed a transaction with a company to the
21 extent that the proceeds of the transaction are used
22 for the benefit of, or transferred to, that company.

23 (5) **RULEMAKING.**—The Board may issue such
24 regulations and orders, including definitions con-
25 sistent with this subsection, as may be necessary to

1 administer and carry out the purpose of this sub-
2 section.

3 (6) EXEMPTIONS.—

4 (A) IN GENERAL.—

5 (i) FEDERAL HOME LOAN BANKS.—

6 This subsection shall not apply to any Fed-
7 eral home loan bank, but Federal home
8 loan banks are not exempt from any other
9 provision of this title except as specifically
10 provided in this title.

11 (ii) APPLICABILITY TO OTHER ENTI-

12 TIES.—The Federal National Mortgage As-
13 sociation and the Federal Home Loan
14 Mortgage Corporation are not exempt from
15 any provision of this title except as specifi-
16 cally provided in this title.

17 (B) REGULATIONS.—The Board may, by

18 regulation or order, exempt transactions, in
19 whole or in part, from the definition of credit
20 exposure if it finds that the exemption is in the
21 public interest and consistent with the purpose
22 of this subsection.

23 (7) TRANSITION PERIOD.—This subsection and

24 any regulations and orders of the Board under the
25 authority of this subsection shall not take effect

1 until the date that is 3 years from the date of the
2 enactment of this subsection. The Board may extend
3 the effective date for up to 2 additional years to pro-
4 mote financial stability.

5 (d) SHORT-TERM DEBT LIMITS FOR CERTAIN FI-
6 NANCIAL HOLDING COMPANIES.—

7 (1) IN GENERAL.—In order to limit the risks
8 that an overaccumulation of short-term debt could
9 pose to financial holding companies and to the sta-
10 bility of the United States financial system, the
11 Board may by regulation prescribe a limit on the
12 amount of short-term debt, including off-balance
13 sheet exposures, that may be accumulated by any fi-
14 nancial holding company subject to stricter stand-
15 ards for purposes of this title.

16 (2) BASIS OF LIMIT.—Any limit prescribed
17 under paragraph (1) shall be based on a financial
18 holding company's short-term debt as a percentage
19 of its capital stock and surplus or on such other
20 measure as the Board considers appropriate.

21 (3) SHORT-TERM DEBT DEFINED.—For pur-
22 poses of this subsection, the term “short-term debt”
23 means such liabilities with short-dated maturity that
24 the Board identifies by regulation, except that such
25 term does not include insured deposits.

1 (4) RULEMAKING AUTHORITY.—In addition to
2 prescribing regulations under paragraphs (1) and
3 (3), the Board may prescribe such regulations, in-
4 cluding definitions consistent with this subsection,
5 and issue such orders as may be necessary to carry
6 out this subsection.

7 (5) AUTHORITY TO ISSUE EXEMPTIONS AND
8 ADJUSTMENTS.—Notwithstanding the Bank Holding
9 Company Act of 1956 (12 U.S.C. 1841 et seq.), the
10 Board may, if it determines such action is necessary
11 to ensure appropriate heightened prudential super-
12 vision, with respect to a financial holding company
13 that does not control an insured depository institu-
14 tion, issue to such company an exemption from or
15 adjustment to the limit prescribed under paragraph
16 (1).

17 (e) PROMPT CORRECTIVE ACTION FOR FINANCIAL
18 HOLDING COMPANIES SUBJECT TO STRICTER STAND-
19 ARDS.—

20 (1) PROMPT CORRECTIVE ACTION REQUIRED.—
21 The Board shall take prompt corrective action to re-
22 solve the problems of financial holding companies
23 subject to stricter standards. Except as specifically
24 provided otherwise, this subsection shall apply only

1 to financial holding companies that are incorporated
2 or organized under United States laws.

3 (2) DEFINITIONS.—For purposes of this sec-
4 tion—

5 (A) CAPITAL CATEGORIES.—

6 (i) WELL CAPITALIZED.—A financial
7 holding company subject to stricter stand-
8 ards is “well capitalized” if it exceeds the
9 required minimum level for each relevant
10 capital measure.

11 (ii) UNDERCAPITALIZED.—A financial
12 holding company subject to stricter stand-
13 ards is “undercapitalized” if it fails to
14 meet the required minimum level for any
15 relevant capital measure.

16 (iii) SIGNIFICANTLY UNDERCAPITAL-
17 IZED.—A financial holding company sub-
18 ject to stricter standards is “significantly
19 undercapitalized” if it is significantly below
20 the required minimum level for any rel-
21 evant capital measure. The Board shall de-
22 fine by rule or regulation the term “signifi-
23 cantly undercapitalized” at a threshold the
24 Board determines to be prudent for the ef-

fective monitoring, management and oversight of the financial system.

(iv) CRITICALLY UNDERCAPITALIZED.—A financial holding company subject to stricter standards is “critically undercapitalized” if it fails to meet any level specified in paragraph (4)(C)(i).

(3) OTHER DEFINITIONS.—

(A) AVERAGE.—The “average” of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(B) CAPITAL DISTRIBUTION.—The term “capital distribution” means—

(i) a distribution of cash or other property by a financial holding company subject to stricter standards to its owners made on account of that ownership, but not including any dividend consisting only of shares of the financial holding company subject to stricter standards or rights to purchase such shares;

1 (ii) a payment by a financial holding
2 company subject to stricter standards to
3 repurchase, redeem, retire, or otherwise ac-
4 quire any of its shares or other ownership
5 interests, including any extension of credit
6 to finance any person's acquisition of those
7 shares or interests; and

8 (iii) a transaction that the Board de-
9 termines, by order or regulation, to be in
10 substance a distribution of capital to the
11 owners of the financial holding company
12 subject to stricter standards.

13 (C) CAPITAL RESTORATION PLAN.—The
14 term “capital restoration plan” means a plan
15 submitted under paragraph (6)(B).

16 (D) COMPENSATION.—The term “com-
17 pensation” includes any payment of money or
18 provision of any other thing of value in consid-
19 eration of employment.

20 (E) RELEVANT CAPITAL MEASURE.—The
21 term “relevant capital measure” means the
22 measures described in paragraph (4).

23 (F) REQUIRED MINIMUM LEVEL.—The
24 term “required minimum level” means, with re-
25 spect to each relevant capital measure, the min-

1 imum acceptable capital level specified by the
2 Board by regulation.

3 (G) SENIOR EXECUTIVE OFFICER.—The
4 term “senior executive officer” has the same
5 meaning as the term “executive officer” in sec-
6 tion 22(h) of the Federal Reserve Act (12
7 U.S.C. 375b).

8 (4) CAPITAL STANDARDS.—

9 (A) RELEVANT CAPITAL MEASURES.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii)(II), the capital standards pre-
12 scribed by the Board under section
13 1104(a)(2) shall include—

14 (I) a leverage limit; and

15 (II) a risk-based capital require-
16 ment.

17 (ii) OTHER CAPITAL MEASURES.—The
18 Board may by regulation—

19 (I) establish any additional rel-
20 evant capital measures to carry out
21 this section; or

22 (II) rescind any relevant capital
23 measure required under clause (i)
24 upon determining that the measure is

1 no longer an appropriate means for
2 carrying out this section.

3 (B) CAPITAL CATEGORIES GENERALLY.—

4 The Board shall, by regulation, specify for each
5 relevant capital measure the levels at which a
6 financial holding company subject to stricter
7 standards is well capitalized, undercapitalized,
8 and significantly undercapitalized.

9 (C) CRITICAL CAPITAL.—

10 (i) BOARD TO SPECIFY LEVEL.—

11 (I) LEVERAGE LIMIT.—The
12 Board shall, by regulation, specify the
13 ratio of tangible equity to total assets
14 at which a financial holding company
15 subject to stricter standards is criti-
16 cally undercapitalized.

17 (II) OTHER RELEVANT CAPITAL
18 MEASURES.—The Board may, by reg-
19 ulation, specify for 1 or more other
20 relevant capital measures, the level at
21 which a financial holding company
22 subject to stricter standards is criti-
23 cally undercapitalized.

1 (ii) LEVERAGE LIMIT RANGE.—The
2 level specified under clause (i)(I) shall re-
3 quire tangible equity in an amount—

4 (I) not less than 2 percent of
5 total assets; and

6 (II) except as provided in sub-
7 clause (I), not more than 65 percent
8 of the required minimum level of cap-
9 ital under the leverage limit.

10 (5) CAPITAL DISTRIBUTIONS RESTRICTED.—

11 (A) IN GENERAL.—A financial holding
12 company subject to stricter standards shall
13 make no capital distribution if, after making
14 the distribution, the financial holding company
15 subject to stricter standards would be under-
16 capitalized.

17 (B) EXCEPTION.—Notwithstanding sub-
18 paragraph (A), the Board may permit a finan-
19 cial holding company subject to stricter stand-
20 ards to repurchase, redeem, retire, or otherwise
21 acquire shares or ownership interests if the re-
22 purchase, redemption, retirement, or other ac-
23 quisition—

24 (i) is made in connection with the
25 issuance of additional shares or obligations

1 of the financial holding company subject to
2 stricter standards in at least an equivalent
3 amount; and

4 (ii) will reduce the financial obliga-
5 tions of the financial holding company sub-
6 ject to stricter standards or otherwise im-
7 prove the financial condition of the finan-
8 cial holding company subject to stricter
9 standards.

10 (6) PROVISIONS APPLICABLE TO UNDER-
11 CAPITALIZED FINANCIAL HOLDING COMPANY SUB-
12 JECT TO STRICTER STANDARDS.—

13 (A) MONITORING REQUIRED.—The Board
14 shall—

15 (i) closely monitor the condition of
16 any undercapitalized financial holding com-
17 pany subject to stricter standards;

18 (ii) closely monitor compliance by any
19 undercapitalized financial holding company
20 subject to stricter standards with capital
21 restoration plans, restrictions, and require-
22 ments imposed under this section; and

23 (iii) periodically review the plan, re-
24 strictions, and requirements applicable to
25 any undercapitalized financial holding com-

pany subject to stricter standards to determine whether the plan, restrictions, and requirements are effective.

(B) CAPITAL RESTORATION PLAN REQUIRED.—

(i) IN GENERAL.—Any undercapitalized financial holding company subject to stricter standards shall submit an acceptable capital restoration plan to the Board within the time allowed by the Board under clause (iv).

(ii) CONTENTS OF PLAN.—The capital restoration plan shall—

(I) specify—

(aa) the steps the financial holding company subject to stricter standards will take to become well capitalized;

(bb) the levels of capital to be attained by the financial holding company subject to stricter standards during each year in which the plan will be in effect;

(cc) how the financial holding company subject to stricter

1 standards will comply with the
2 restrictions or requirements then
3 in effect under this section; and

4 (dd) the types and levels of
5 activities in which the financial
6 holding company subject to
7 stricter standards will engage;
8 and

9 (II) contain such other informa-
10 tion that the Board may require.

11 (iii) CRITERIA FOR ACCEPTING
12 PLAN.—The Board shall not accept a cap-
13 ital restoration plan unless it determines
14 that the plan—

15 (I) complies with clause (ii);

16 (II) is based on realistic assump-
17 tions, and is likely to succeed in re-
18 storing the capital of the financial
19 holding company subject to stricter
20 standards; and

21 (III) would not appreciably in-
22 crease the risk (including credit risk,
23 interest-rate risk, and other types of
24 risk) to which the financial holding

1 company subject to stricter standards
2 is exposed.

3 (iv) DEADLINES FOR SUBMISSION AND
4 REVIEW OF PLANS.—The Board shall, by
5 regulation, establish deadlines that—

6 (I) provide financial holding com-
7 panies subject to stricter standards
8 with reasonable time to submit capital
9 restoration plans, and generally re-
10 quire a financial holding company
11 subject to stricter standards to submit
12 a plan not later than 45 days after it
13 becomes undercapitalized; and

14 (II) require the Board to act on
15 capital restoration plans expeditiously,
16 and generally not later than 60 days
17 after the plan is submitted.

18 (C) ASSET GROWTH RESTRICTED.—An
19 undercapitalized financial holding company sub-
20 ject to stricter standards shall not permit its
21 average total assets during any calendar quar-
22 ter to exceed its average total assets during the
23 preceding calendar quarter unless—

1 (i) the Board has accepted the capital
2 restoration plan of the financial holding
3 company subject to stricter standards;

4 (ii) any increase in total assets is con-
5 sistent with the plan; and

6 (iii) the ratio of tangible equity to
7 total assets of the financial holding com-
8 pany subject to stricter standards increases
9 during the calendar quarter at a rate suffi-
10 cient to enable it to become well capitalized
11 within a reasonable time.

12 (D) PRIOR APPROVAL REQUIRED FOR AC-
13 QUISTIONS AND NEW LINES OF BUSINESS.—An
14 undercapitalized financial holding company sub-
15 ject to stricter standards shall not, directly or
16 indirectly, acquire any interest in any company
17 or insured depository institution, or engage in
18 any new line of business, unless—

19 (i) the Board has accepted the capital
20 restoration plan of the financial holding
21 company subject to stricter standards, the
22 financial holding company subject to strict-
23 er standards is implementing the plan, and
24 the Board determines that the proposed

1 action is consistent with and will further
2 the achievement of the plan;

3 (ii) the Board determines that the
4 specific proposed action is appropriate; or

5 (iii) the Board has exempted the fi-
6 nancial holding company subject to stricter
7 standards from the requirements of this
8 paragraph with respect to the class of ac-
9 quisitions that includes the proposed ac-
10 tion.

11 (E) DISCRETIONARY SAFEGUARDS.—The
12 Board may, with respect to any undercapital-
13 ized financial holding company subject to strict-
14 er standards, take actions described in any
15 clause of paragraph (7)(B) if the Board deter-
16 mines that those actions are necessary. The
17 Board, in determining whether to impose any
18 requirement under this subparagraph that is
19 likely to have a significant effect on a function-
20 ally regulated subsidiary, subsidiary depository
21 institution, or insurance company subsidiary of
22 a financial holding company subject to stricter
23 standards, shall consult with the primary finan-
24 cial regulatory agency for such subsidiary. In
25 the case of an insurance company subsidiary of

1 a financial holding company subject to stricter
2 standards, the Board shall consult with the
3 Federal Insurance Office.

4 (7) PROVISIONS APPLICABLE TO SIGNIFICANTLY
5 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
6 NIES SUBJECT TO STRICTER STANDARDS AND
7 UNDERCAPITALIZED FINANCIAL HOLDING COMPA-
8 NIES SUBJECT TO STRICTER STANDARDS THAT FAIL
9 TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION
10 PLANS.—

11 (A) IN GENERAL.—This paragraph shall
12 apply with respect to any financial holding com-
13 pany subject to stricter standards that—

14 (i) is significantly undercapitalized; or

15 (ii) is undercapitalized and—

16 (I) fails to submit an acceptable
17 capital restoration plan within the
18 time allowed by the Board under
19 paragraph (6)(B)(iv); or

20 (II) fails in any material respect
21 to implement a capital restoration
22 plan accepted by the Board.

23 (B) SPECIFIC ACTIONS AUTHORIZED.—The
24 Board shall carry out this paragraph by taking
25 1 or more of the following actions—

1 (i) REQUIRING RECAPITALIZATION.—

2 Doing one or more of the following:

3 (I) Requiring the financial hold-
4 ing company subject to stricter stand-
5 ards to sell enough shares or obliga-
6 tions of the financial holding company
7 subject to stricter standards so that
8 the financial holding company subject
9 to stricter standards will be well cap-
10 italized after the sale.

11 (II) Further requiring that in-
12 struments sold under subclause (I) be
13 voting shares.

14 (III) Requiring the financial
15 holding company subject to stricter
16 standards to be acquired by or com-
17 bine with another company.

18 (ii) RESTRICTING TRANSACTIONS

19 WITH AFFILIATES.—

20 (I) Requiring the financial hold-
21 ing company subject to stricter stand-
22 ards to comply with section 23A of
23 the Federal Reserve Act (12 U.S.C.
24 371c), as if it were a member bank.

1 (II) Further restricting the
2 transactions of the financial holding
3 company subject to stricter standards
4 with affiliates and insiders.

5 (iii) RESTRICTING ASSET GROWTH.—
6 Restricting the asset growth of the finan-
7 cial holding company subject to stricter
8 standards more stringently than paragraph
9 (6)(C), or requiring the financial holding
10 company subject to stricter standards to
11 reduce its total assets.

12 (iv) RESTRICTING ACTIVITIES.—Re-
13 quiring the financial holding company sub-
14 ject to stricter standards or any of its sub-
15 sidiaries to alter, reduce, or terminate any
16 activity that the Board determines poses
17 excessive risk to the financial holding com-
18 pany subject to stricter standards.

19 (v) IMPROVING MANAGEMENT.—Doing
20 one or more of the following:

21 (I) NEW ELECTION OF DIREC-
22 TORS.—Ordering a new election for
23 the board of directors of the financial
24 holding company subject to stricter
25 standards.

1 (II) DISMISSING DIRECTORS OR
2 SENIOR EXECUTIVE OFFICERS.—Re-
3 quiring the financial holding company
4 subject to stricter standards to dis-
5 miss from office any director or senior
6 executive officer who had held office
7 for more than 180 days immediately
8 before the financial holding company
9 subject to stricter standards became
10 undercapitalized. Dismissal under this
11 clause shall not be construed to be a
12 removal under section 8 of the Fed-
13 eral Deposit Insurance Act (12 U.S.C.
14 1818).

15 (III) EMPLOYING QUALIFIED
16 SENIOR EXECUTIVE OFFICERS.—Re-
17 quiring the financial holding company
18 subject to stricter standards to employ
19 qualified senior executive officers
20 (who, if the Board so specifies, shall
21 be subject to approval by the Board).

22 (vi) REQUIRING DIVESTITURE.—Re-
23 quiring the financial holding company sub-
24 ject to stricter standards to divest itself of
25 or liquidate any subsidiary if the Board de-

1 termines that the subsidiary is in danger
2 of becoming insolvent, poses a significant
3 risk to the financial holding company sub-
4 ject to stricter standards, or is likely to
5 cause a significant dissipation of the assets
6 or earnings of the financial holding com-
7 pany subject to stricter standards.

8 (vii) REQUIRING OTHER ACTION.—Re-
9 quiring the financial holding company sub-
10 ject to stricter standards to take any other
11 action that the Board determines will bet-
12 ter carry out the purpose of this section
13 than any of the actions described in this
14 subparagraph.

15 (C) PRESUMPTION IN FAVOR OF CERTAIN
16 ACTIONS.—In complying with subparagraph
17 (B), the Board shall take the following actions,
18 unless the Board determines that the actions
19 would not be appropriate:

20 (i) The action described in subclause
21 (I) or (III) of subparagraph (B)(i) (relat-
22 ing to requiring the sale of shares or obli-
23 gations, or requiring the financial holding
24 company subject to stricter standards to be

1 acquired by or combine with another com-
2 pany).

3 (ii) The action described in subpara-
4 graph (B)(ii) (relating to restricting trans-
5 actions with affiliates).

6 (D) SENIOR EXECUTIVE OFFICERS' COM-
7 PENSATION RESTRICTED.—

8 (i) IN GENERAL.—The financial hold-
9 ing company subject to stricter standards
10 shall not do any of the following without
11 the prior written approval of the Board:

12 (I) Pay any bonus to any senior
13 executive officer.

14 (II) Provide compensation to any
15 senior executive officer at a rate ex-
16 ceeding that officer's average rate of
17 compensation (excluding bonuses,
18 stock options, and profit-sharing) dur-
19 ing the 12 calendar months preceding
20 the calendar month in which the fi-
21 nancial holding company subject to
22 stricter standards became under-
23 capitalized.

24 (ii) FAILING TO SUBMIT PLAN.—The
25 Board shall not grant any approval under

1 clause (i) with respect to a financial hold-
2 ing company subject to stricter standards
3 that has failed to submit an acceptable
4 capital restoration plan.

5 (E) CONSULTATION WITH OTHER REGU-
6 LATORS.—Before the Board makes a deter-
7 mination under subparagraph (B)(vi) with re-
8 spect to a subsidiary that is a broker, dealer,
9 government securities broker, government secu-
10 rities dealer, investment company, or invest-
11 ment adviser, the Board shall consult with the
12 Securities and Exchange Commission and, in
13 the case of any other subsidiary which is sub-
14 ject to any financial responsibility or capital re-
15 quirement, any other appropriate regulator of
16 such subsidiary with respect to the proposed de-
17 termination of the Board and actions pursuant
18 to such determination.

19 (8) MORE STRINGENT TREATMENT BASED ON
20 OTHER SUPERVISORY CRITERIA.—

21 (A) IN GENERAL.—If the Board deter-
22 mines (after notice and an opportunity for
23 hearing) that a financial holding company sub-
24 ject to stricter standards is in an unsafe or un-
25 sound condition or, pursuant to section 8(b)(8)

1 of the Federal Deposit Insurance Act (12
2 U.S.C. 1818(b)(8)), deems the financial holding
3 company subject to stricter standards to be en-
4 gaging in an unsafe or unsound practice, the
5 Board may—

6 (i) if the financial holding company
7 subject to stricter standards is well capital-
8 ized, require the financial holding company
9 subject to stricter standards to comply
10 with one or more provisions of paragraphs
11 (6) and (7), as if the institution were
12 undercapitalized; or

13 (ii) if the financial holding company
14 subject to stricter standards is under-
15 capitalized, take any one or more actions
16 authorized under paragraph (7)(B) as if
17 the financial holding company subject to
18 stricter standards were significantly under-
19 capitalized, after consultation with the pri-
20 mary financial regulatory agency for any
21 functionally regulated subsidiary, sub-
22 subsidiary depository institution, or insurance
23 company subsidiary that is likely to be sig-
24 nificantly affected by such actions. In the
25 case of an insurance company subsidiary of

1 a financial holding company subject to
2 stricter standards, the Board shall consult
3 with the Federal Insurance Office.

4 (B) CONTENTS OF PLAN.—A plan that
5 may be required pursuant to subparagraph
6 (A)(i) shall specify the steps that the financial
7 holding company subject to stricter standards
8 will take to correct the unsafe or unsound con-
9 dition or practice.

10 (9) IMPLEMENTATION.—The Board shall pre-
11 scribe such regulations, issue such orders, and take
12 such other actions the Board determines to be nec-
13 essary to carry out this subsection.

14 (10) OTHER AUTHORITY NOT AFFECTED.—This
15 section does not limit any authority of the Board,
16 any other Federal regulatory agency, or a State to
17 take action in addition to (but not in derogation of)
18 that required under this section.

19 (11) CONSULTATION.—The Board and the Sec-
20 retary of the Treasury shall consult with their for-
21 eign counterparts and through appropriate multilat-
22 eral organizations to reach agreement to extend
23 comprehensive and robust prudential supervision and
24 regulation to all highly leveraged and substantially
25 interconnected financial companies.

1 (12) ADMINISTRATIVE REVIEW OF DISMISSAL
2 ORDERS.—

3 (A) TIMELY PETITION REQUIRED.—A di-
4 rector or senior executive officer dismissed pur-
5 suant to an order under paragraph
6 (7)(B)(v)(II) may obtain review of that order
7 by filing a written petition for reinstatement
8 with the Board not later than 10 days after re-
9 ceiving notice of the dismissal.

10 (B) PROCEDURE.—

11 (i) HEARING REQUIRED.—The Board
12 shall give the petitioner an opportunity
13 to—

14 (I) submit written materials in
15 support of the petition; and

16 (II) appear, personally or
17 through counsel, before 1 or more
18 members of the Board or designated
19 employees of the Board.

20 (ii) DEADLINE FOR HEARING.—The
21 Board shall—

22 (I) schedule the hearing referred
23 to in clause (i)(II) promptly after the
24 petition is filed; and

1 (II) hold the hearing not later
2 than 30 days after the petition is
3 filed, unless the petitioner requests
4 that the hearing be held at a later
5 time.

6 (iii) DEADLINE FOR DECISION.—Not
7 later than 60 days after the date of the
8 hearing, the Board shall—

9 (I) by order, grant or deny the
10 petition;

11 (II) if the order is adverse to the
12 petitioner, set forth the basis for the
13 order; and

14 (III) notify the petitioner of the
15 order.

16 (C) STANDARD FOR REVIEW OF DISMISSAL
17 ORDERS.—The petitioner shall bear the burden
18 of proving that the petitioner's continued em-
19 ployment would materially strengthen the abil-
20 ity of the financial holding company subject to
21 stricter standards—

22 (i) to become well capitalized, to the
23 extent that the order is based on the cap-
24 ital level of the financial holding company
25 subject to stricter standards or such com-

pany's failure to submit or implement a capital restoration plan; and

(ii) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on paragraph (8)(A).

(13) ENFORCEMENT AUTHORITY FOR FOREIGN FINANCIAL HOLDING COMPANY SUBJECT TO STRICTER STANDARDS.—

(A) TERMINATION AUTHORITY.—If the Board believes that a condition, practice, or activity of a foreign financial holding company subject to stricter standards does not comply with this title or the rules or orders prescribed by the Board under this title or otherwise poses a threat to financial stability, the Board may, after notice and opportunity for a hearing, take such actions as necessary to mitigate such risk, including ordering a foreign financial holding company subject to stricter standards in the United States to terminate the activities of such branch, agency, or subsidiary.

(B) DISCRETION TO DENY HEARING.—The Board may issue an order under paragraph (1) without providing for an opportunity for a hear-

1 ing if the Board determines that expeditious ac-
 2 tion is necessary in order to protect the public
 3 interest.

4 (f) REPORTS REGARDING RAPID AND ORDERLY RES-
 5 OLUTION AND CREDIT EXPOSURE.—

6 (1) IN GENERAL.—The Board shall require
 7 each financial holding company subject to stricter
 8 standards incorporated or organized in the United
 9 States to report periodically to the Board on—

10 (A) its plan for rapid and orderly resolu-
 11 tion in the event of severe financial distress;

12 (B) the nature and extent to which the fi-
 13 nancial holding company subject to stricter
 14 standards has credit exposure to other signifi-
 15 cant financial companies; and

16 (C) the nature and extent to which other
 17 significant financial companies have credit ex-
 18 posure to the financial holding company subject
 19 to stricter standards.

20 (2) NO LIMITING EFFECT.—A rapid resolution
 21 plan submitted in accordance with this subsection
 22 shall not be binding on a receiver appointed under
 23 subtitle G, a bankruptcy court, or any other author-
 24 ity that is authorized or required to resolve the fi-

1 nancial holding company subject to stricter stand-
2 ards or any of its subsidiaries or affiliates.

3 (3) REPORTING TRIGGERED BY STRESS TEST
4 RESULTS.—

5 (A) FINANCIAL HOLDING COMPANIES SUB-
6 JECT TO STRICTER STANDARDS.—Each time
7 the results of a quarterly stress test under base-
8 line or adverse conditions conducted by a finan-
9 cial holding company subject to stricter stand-
10 ards under section 1114(a) or the results of a
11 stress test of that financial holding company
12 subject to stricter standards conducted by the
13 Board under subsection (g) indicate that the fi-
14 nancial holding company subject to stricter
15 standards is, in the determination of the Board,
16 significantly or critically undercapitalized, that
17 financial holding company subject to stricter
18 standards shall submit a rapid resolution plan
19 in accordance with this subsection that has
20 been revised to address the causes of those re-
21 sults.

22 (B) FINANCIAL COMPANIES THAT ARE NOT
23 FINANCIAL HOLDING COMPANIES SUBJECT TO
24 STRICTER STANDARDS.—Each time the results
25 of a semiannual stress test under baseline or

1 adverse conditions conducted by a financial
2 company under section 1114(b) indicate that
3 the financial company is, in the determination
4 of the Board, significantly or critically under-
5 capitalized, that financial company shall be re-
6 quired to report under this subsection. The
7 Board shall prescribe regulations establishing
8 expedited procedures for such reporting.

9 (C) TRANSPARENCY.—Any rapid resolution
10 plan submitted pursuant to this paragraph shall
11 be subject to any restrictions regarding the dis-
12 closure of any other rapid resolution plan sub-
13 mitted pursuant to this subsection.

14 (g) STRESS TESTS.—

15 (1) The Board, in coordination with the appro-
16 priate primary financial regulatory agency, shall
17 conduct annual stress tests of each financial holding
18 company subject to stricter standards. The Board
19 may, as the Board determines appropriate, conduct
20 stress tests of financial companies that are not fi-
21 nancial holding companies subject to stricter stand-
22 ards. The Board shall publish a summary of the re-
23 sults of such stress tests.

24 (2) The Board shall issue regulations to define
25 the term “stress test” for purposes of this sub-

1 section. Such a definition shall provide for not less
2 than 3 different sets of conditions under which a
3 stress test should be conducted: baseline, adverse,
4 and severely adverse scenarios.

5 (h) AVOIDING DUPLICATION.—The Board shall take
6 any action the Board deems appropriate to avoid imposing
7 duplicative requirements under this subtitle for financial
8 holding companies subject to stricter standards that are
9 also bank holding companies.

10 (i) RESOLUTION PLANS REQUIRED.—

11 (1) IN GENERAL.—The Corporation and the
12 Board, after consultation with the Council, shall
13 jointly issue regulations requiring financial holding
14 companies subject to stricter standards to develop
15 plans designed to assist in the rapid and orderly res-
16 olution of the company.

17 (2) STANDARDS FOR RESOLUTION PLANS.—The
18 regulations required by paragraph (1) shall—

19 (A) define the scope of financial holding
20 companies subject to stricter standards covered
21 by these requirements and may exempt finan-
22 cial holding companies subject to stricter stand-
23 ards from the requirements of this subsection if
24 the Corporation and the Board jointly deter-

1 mine that exemption is consistent with the pur-
2 poses of this title;

3 (B) require each plan to demonstrate that
4 any insured depository institution affiliated
5 with a financial holding company subject to
6 stricter standards is adequately insulated from
7 the activities of any non-bank subsidiary of the
8 institution or financial holding companies sub-
9 ject to stricter standards;

10 (C) require that each plan include informa-
11 tion detailing—

12 (i) the nature and extent to which the
13 financial holding company subject to strict-
14 er standards has credit exposure to other
15 significant financial companies;

16 (ii) the nature and extent to which
17 other significant financial companies have
18 credit exposure to the financial holding
19 company subject to stricter standards;

20 (iii) full descriptions of the financial
21 holding company subject to stricter stand-
22 ards' ownership structure, assets, liabil-
23 ities, and contractual obligations; and

24 (iv) the cross-guarantees tied to dif-
25 ferent securities, a list of major counter-

1 parties, and a process for determining
2 where the financial holding company sub-
3 ject to stricter standards' collateral is
4 pledged; and

5 (D) establish such other standards as the
6 Corporation and the Board may jointly deem
7 necessary to carry out this subsection.

8 (3) REVIEW OF PLANS.—

9 (A) SUBMISSION OF PLANS.—Each finan-
10 cial holding company subject to stricter stand-
11 ards that is subject to the requirement under
12 paragraph (1) shall submit its plan to the Cor-
13 poration and the Board.

14 (B) REVIEW.—Upon the submission of a
15 plan pursuant to subparagraph (A), and not
16 less often than annually thereafter, the Cor-
17 poration and the Board, after consultation with
18 any Federal financial regulatory agencies with
19 jurisdiction over the financial holding company
20 subject to stricter standards (and, if the finan-
21 cial holding company subject to stricter stand-
22 ards is an insurance company, the Federal In-
23 surance Office), shall jointly review such plan
24 and may require a financial holding company
25 subject to stricter standards to revise its plan

1 consistent with the standards established pursu-
2 ant to paragraph (2).

3 (4) ENFORCEMENT.—

4 (A) IN GENERAL.—The Corporation, after
5 consultation with the Board, shall have the au-
6 thority to take any enforcement action in sec-
7 tion 8 of the Federal Deposit Insurance Act (12
8 U.S.C. 1818) against any financial holding
9 company subject to stricter standards that fails
10 to comply with the requirements of this section
11 or any regulations issued pursuant to this sec-
12 tion.

13 (B) NO LIMITATION ON BOARD AUTHOR-
14 ITY.—Nothing under this subsection shall be
15 construed as limiting any enforcement authority
16 available to the Board under any other provi-
17 sion of law.

18 (5) NO LIMITING EFFECT ON RECEIVER.—A
19 rapid resolution plan submitted under this section
20 shall not be binding on a receiver appointed under
21 subtitle G, a bankruptcy court, or any other author-
22 ity that is authorized or required to resolve the fi-
23 nancial holding company subject to stricter stand-
24 ards or any of its subsidiaries or affiliates.

1 (6) NO PRIVATE RIGHT OF ACTION.—No pri-
2 vate right of action may be based on any resolution
3 plan submitted under this section.

4 (j) RULE OF CONSTRUCTION REGARDING CONSUMER
5 PROTECTION STANDARDS.—The prudential standards im-
6 posed or recommended by the Board or the Council under
7 this section shall not be construed as superseding—

8 (1) any consumer protection standards promul-
9 gated under a State or Federal consumer protection
10 law, including the Consumer Financial Protection
11 Agency Act and the Federal Trade Commission Act;
12 or

13 (2) any investor protection standard that pro-
14 tects consumers (including public reporting require-
15 ments) imposed under State or Federal securities
16 laws, including the Securities Act of 1933, the Secu-
17 rities Exchange Act of 1934, the Investment Com-
18 pany Act of 1944, and the Investment Advisors Act
19 of 1944.

20 (k) RULEMAKING AUTHORITY.—The Board may pre-
21 scribe such regulations and issue such orders as the
22 Board, in consultation with the Council, determines to be
23 necessary to carry out the provisions of this subtitle.

1 **SEC. 1105. MITIGATION OF SYSTEMIC RISK.**

2 (a) COUNCIL AUTHORITY TO RESTRICT OPERATIONS
3 AND ACTIVITIES.—If the Council determines, after notice
4 and an opportunity for hearing, that despite the higher
5 prudential standards imposed pursuant to section
6 1104(a)(2), the size of a financial holding company sub-
7 ject to stricter standards or the scope, nature, scale, con-
8 centration, interconnectedness, or mix of activities directly
9 or indirectly conducted by a financial holding company
10 subject to stricter standards poses a grave threat to the
11 financial stability or economy of the United States, the
12 Council shall require the company to undertake 1 or more
13 mitigatory actions described in subsection (d).

14 (b) CONSULTATION WITH FEDERAL FINANCIAL
15 REGULATORY AGENCIES.—The Council, in determining
16 whether to impose any requirement under this section that
17 is likely to have a significant impact on a functionally reg-
18 ulated subsidiary, or a subsidiary depository institution,
19 of a financial holding company subject to stricter stand-
20 ards under this title, shall consult with the Federal finan-
21 cial regulatory agency for any such subsidiary. With re-
22 spect to any requirements under this section that is likely
23 to have a significant effect on an insurance company, the
24 Council shall consult with the Federal Insurance Office.

25 (c) FACTORS FOR CONSIDERATION.—In reaching a
26 determination described in subsection (a), the Council

1 shall take into consideration the following factors, as ap-
2 propriate—

3 (1) the amount and nature of the company's fi-
4 nancial assets;

5 (2) the amount and nature of the company's li-
6 abilities, including the degree of reliance on short-
7 term funding;

8 (3) the extent and nature of the company's off-
9 balance sheet exposures;

10 (4) the company's reliance on leverage;

11 (5) the extent and nature of the company's
12 transactions, relationships, and interconnectedness
13 with other financial and non-financial companies;

14 (6) the company's importance as a source of
15 credit for households, businesses, and State and
16 local governments and as a source of liquidity for
17 the financial system;

18 (7) the scope, nature, size, scale, concentration,
19 interconnectedness and mix of the company's activi-
20 ties;

21 (8) the extent to which prudential regulations
22 mitigate the risk posed; and

23 (9) any other factors identified that the Council
24 determines appropriate.

25 (d) MITIGATORY ACTIONS.—

1 (1) IN GENERAL.—Mitigatory action may in-
2 clude—

3 (A) modifying the stricter prudential
4 standards imposed pursuant to section 1104(a);

5 (B) terminating 1 or more activities;

6 (C) imposing conditions on the manner in
7 which a financial holding company subject to
8 stricter standards conducts 1 or more activities;

9 (D) limiting the ability to merge with, ac-
10 quire, consolidate with, or otherwise become af-
11 filiated with another company;

12 (E) restricting the ability to offer a finan-
13 cial product or products; and

14 (F) in the event the Council deems sub-
15 paragraphs (A) through (E) inadequate as a
16 means to address the identified risks, selling,
17 divesting, or otherwise transferring business
18 units, branches, assets, or off-balance sheet
19 items to unaffiliated companies.

20 (2) INTERNATIONAL COMPETITIVENESS CON-
21 SIDERATIONS.—In making any decision pursuant to
22 paragraph (1), the Council shall consider—

23 (A) the need to maintain the international
24 competitiveness of the United States financial
25 services industry; and

1 (B) the extent to which other countries
2 with a significant financial services industry
3 have established corresponding regimes to miti-
4 gate threats to financial stability or the econ-
5 omy posed by financial companies.

6 (e) DUE PROCESS.—

7 (1) NOTICE AND HEARING.—The Council shall
8 give notice to a financial holding company subject to
9 stricter standards, and opportunity for hearing if re-
10 quested, that the financial holding company subject
11 to stricter standards is being considered for mitiga-
12 tory action pursuant to subsection (a). The hearing
13 shall occur no later than 30 days after the financial
14 company receives notice of the proposed action from
15 the Council.

16 (2) NOTICE.—The Council shall notify the fi-
17 nancial holding company subject to stricter stand-
18 ards of the Council's determination, and, if the
19 Council determines that mitigatory action is appro-
20 priate, require the company to submit a plan to the
21 Council to implement the required mitigatory action.

22 (3) SUBMISSION OF PLAN.—The financial hold-
23 ing company subject to stricter standards shall sub-
24 mit its proposed plan to implement the required
25 mitigatory action or actions to the Council within 60

1 days from the date it receives notice under para-
2 graph (2) or such shorter timeframe as the Council
3 may require, if the Council determines an emergency
4 situation merits expeditious implementation.

5 (4) APPROVAL OR AMENDMENT OF THE
6 PLAN.—The Council shall review the plan submitted
7 pursuant to paragraph (3) and determine whether
8 the plan achieves the goal of mitigating a grave
9 threat to the financial stability or the economy of
10 the United States. The Council may approve or dis-
11 approve the plan with or without amendment.

12 (5) EFFECT OF PLAN APPROVAL.—The Council
13 shall—

14 (A) notify a financial holding company
15 subject to stricter standards by order, which
16 shall be public, that the Council has approved
17 the plan with or without amendment; and

18 (B) direct the Board to require a financial
19 holding company subject to stricter standards
20 to comply with the plan to implement mitiga-
21 tory action or actions within a reasonable time-
22 frame after the Council's approval and in ac-
23 cordance with such deadlines established in the
24 plan.

1 (f) TREASURY SECRETARY CONCURRENCE.—Mitiga-
2 tory action imposed by the Council involving the sale, di-
3 vestiture, or transfer of more than \$10,000,000,000 in
4 total assets by a financial holding company subject to
5 stricter standards shall require the Secretary of the Treas-
6 ury's concurrence before the issuance of the notice in sub-
7 section (e)(5)(A). If the sale, divestiture, or transfer of
8 total assets by a financial holding company subject to
9 stricter standards exceeds \$100,000,000,000, the Sec-
10 retary of the Treasury shall consult with the President be-
11 fore concurrence. The aforementioned amounts shall be in-
12 dexed to inflation.

13 (g) FAILURE TO IMPLEMENT THE PLAN.—If a finan-
14 cial holding company subject to stricter standards fails to
15 implement a plan for mitigatory action imposed pursuant
16 to this section within a reasonable timeframe, the Council
17 shall direct the Board to take such actions as necessary
18 to ensure compliance with the plan.

19 (h) JUDICIAL REVIEW.—For any plan required under
20 this section, a financial holding company subject to strict-
21 er standards may, not later than 30 days after receipt of
22 the Council's notice under subsection (e)(2), bring an ac-
23 tion in the United States district court for the judicial dis-
24 trict in which the home office of such company is located,
25 or in the United States District Court for the District of

1 Columbia, for an order requiring that the requirement for
 2 a mitigatory action be rescinded. Judicial review under
 3 this section shall be limited to the imposition of a mitiga-
 4 tory action pursuant to subsection (e)(5). In reviewing the
 5 Council's imposition of a mitigatory action, the court shall
 6 rescind or dismiss only those mitigatory actions it finds
 7 to be imposed in an arbitrary and capricious manner.

8 (i) **RULE OF CONSTRUCTION.**—Nothing in subsection
 9 (h) shall be construed as limiting the authority of a Fed-
 10 eral financial regulatory agency to take action with respect
 11 to a financial company subject to the jurisdiction of such
 12 agency pursuant to applicable law other than this section.

13 **SEC. 1106. SUBJECTING ACTIVITIES OR PRACTICES TO**
 14 **STRICTER PRUDENTIAL STANDARDS FOR FI-**
 15 **NANCIAL STABILITY PURPOSES.**

16 (a) **IN GENERAL.**—The Council may subject a finan-
 17 cial activity or practice to stricter prudential standards
 18 under this subtitle if the Council determines that the con-
 19 duct, scope, nature, size, scale, concentration, or inter-
 20 connectedness of such activity or practice could create or
 21 increase the risk of significant liquidity, credit, or other
 22 problems spreading among financial institutions or mar-
 23 kets and local, minority, or underserved communities, and
 24 thereby threaten the stability of the financial system or
 25 economy.

1 (b) PERIODIC REVIEW OF ACTIVITY IDENTIFICA-
2 TIONS.—

3 (1) SUBMISSION OF ASSESSMENT.—The Board
4 shall periodically submit a report to the Council con-
5 taining an assessment of whether each activity or
6 practice subjected to stricter prudential standards
7 should continue to be subject to such standards.

8 (2) REVIEW AND RECISION.—The Council
9 shall—

10 (A) review the assessment submitted pur-
11 suant to paragraph (1) and any information or
12 recommendation submitted by members of the
13 Council regarding whether a financial activity
14 subjected to stricter prudential standards con-
15 tinues to merit stricter prudential standards;
16 and

17 (B) rescind the action subjecting an activ-
18 ity to heightened prudential supervision if the
19 Council determines that the activity no longer
20 meets the criteria in subsection (a).

21 (c) PROCEDURE FOR SUBJECTING OR CEASING TO
22 SUBJECT AN ACTIVITY OR PRACTICE TO STRICTER PRU-
23 DENTIAL STANDARDS.—

24 (1) COUNCIL AND BOARD COORDINATION.—The
25 Council shall inform the Board if the Council is con-

1 sidering whether to subject or cease to subject an
2 activity to stricter prudential standards in accord-
3 ance with this section.

4 (2) NOTICE AND OPPORTUNITY FOR CONSIDER-
5 ATION OF WRITTEN MATERIALS.—

6 (A) IN GENERAL.—The Board shall, in an
7 executive capacity on behalf of the Council, pro-
8 vide notice to financial companies that the
9 Council is considering whether to subject an ac-
10 tivity or practice to heightened prudential regu-
11 lation, and shall provide a financial company
12 engaged in such activity or practice 30 days to
13 submit written materials to inform the Coun-
14 cil’s decision. The Council shall decide, and the
15 Board shall provide notice of the Council’s deci-
16 sion, within 60 days of the due date for such
17 written materials.

18 (B) EMERGENCY EXCEPTION.—The Coun-
19 cil may waive or modify the requirements of
20 subparagraph (A) if the Council determines
21 that such waiver or modification is necessary or
22 appropriate to prevent or mitigate threats posed
23 by an activity to financial stability. The Board
24 shall, in an executive capacity on behalf of the
25 Council, provide notice of such waiver or modi-

1 fication to financial companies as soon as prac-
 2 ticable, which shall be no later than 24 hours
 3 after the waiver or modification.

4 (3) FORM OF DECISION.—The Board shall pro-
 5 vide all notices required under this subsection by
 6 posting a notice on the Board’s web site and pub-
 7 lishing a notice in the Federal Register.

8 **SEC. 1107. STRICTER REGULATION OF ACTIVITIES AND**
 9 **PRACTICES FOR FINANCIAL STABILITY PUR-**
 10 **POSES.**

11 (a) PRUDENTIAL STANDARDS.—

12 (1) BOARD AUTHORITY TO RECOMMEND.—

13 (A) IN GENERAL.—To mitigate the risks to
 14 United States financial stability and the United
 15 States economy posed by financial activities and
 16 practices that the Council identifies for stricter
 17 prudential standards under section 1106 the
 18 Board, as agent of the Council, shall rec-
 19 ommend prudential standards to the appro-
 20 priate primary financial regulatory agencies to
 21 apply to such identified activities and practices.

22 (B) CONSULTATION WITH PRIMARY FINAN-
 23 CIAL REGULATORY AGENCIES.—The Board, in
 24 developing recommendations under this sub-
 25 section, shall consult with the relevant primary

1 financial regulatory agencies with respect to
2 any standard that is likely to have a significant
3 effect on entities described in section
4 1000(b)(6). With respect to any standard that
5 is likely to have a significant effect on insur-
6 ance companies, the Board also shall consult
7 with the Federal Insurance Office.

8 (2) CRITERIA.—The actions recommended
9 under paragraph (1)—

10 (A) shall be designed to maximize financial
11 stability, taking costs to long-term financial and
12 economic growth into account; and

13 (B) may include prescribing the conduct of
14 the activity or practice in specific ways (such as
15 by limiting its scope, nature, size, scale, con-
16 centration, or interconnectedness, or applying
17 particular capital or risk-management require-
18 ments to the conduct of the activity) or prohib-
19 iting the activity or practice altogether.

20 (3) EXCEPTION.—The standards recommended
21 by the Board and adopted by a primary financial
22 regulatory agency pursuant to this section shall not
23 apply to activities that a foreign financial parent
24 conducts solely outside the United States if such ac-
25 tivities are conducted solely by a company or other

1 operating entity that is located outside the United
2 States.

3 (b) IMPLEMENTATION OF RECOMMENDED STAND-
4 ARDS.—

5 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
6 AGENCY.—Each primary financial regulatory agency
7 is authorized to impose, require reports regarding,
8 examine for compliance with, and enforce standards
9 in accordance with this section with respect to those
10 entities described in section 1000(b)(6) for which it
11 is the primary financial regulatory agency. This au-
12 thority is in addition to and does not limit any other
13 authority of the primary financial regulatory agen-
14 cies. Compliance by an entity with actions taken by
15 a primary financial regulatory agency under this sec-
16 tion shall be enforceable in accordance with the stat-
17 utes governing the respective primary financial regu-
18 latory agency's jurisdiction over the entity as if the
19 agency action were taken under those statutes.

20 (2) IMPOSITION OF STANDARDS.—Standards
21 imposed under this subsection shall be the standards
22 recommended by the Board in accordance with sub-
23 section (a) or any other similar standards that the
24 Board deems acceptable after consultation between

1 the Board and the primary financial regulatory
2 agency.

3 (3) PRIMARY FINANCIAL REGULATORY AGENCY
4 RESPONSE.—A primary financial regulatory agency
5 shall notify the Council and the Board in writing on
6 whether and to what extent the agency has imposed
7 the stricter prudential standards described in para-
8 graph (2) within 60 days of the Board’s rec-
9 ommendation. A primary financial regulatory agency
10 that fails to impose such standards shall provide
11 specific justification for such failure to act in the
12 written notice from the agency to the Council and
13 Board.

14 **SEC. 1108. EFFECT OF RESCISSION OF IDENTIFICATION.**

15 (a) NOTICE.—When the Council determines that a
16 company or activity or practice no longer is subject to
17 heightened prudential scrutiny, the Board shall inform the
18 relevant primary financial regulatory agency or agencies
19 (if different from the Board) of that finding.

20 (b) DETERMINATION OF PRIMARY FINANCIAL REGU-
21 LATORY AGENCY TO CONTINUE.—A primary financial
22 regulatory agency that has imposed stricter prudential
23 standards for financial stability purposes under this sub-
24 title shall determine whether standards that it has im-
25 posed under this subtitle should remain in effect.

1 **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

2 (a) IN GENERAL.—Upon the written determination
3 of the Council that a liquidity event exists that could de-
4 stabilize the financial system (which determination shall
5 be made upon a vote of not less than two-thirds of the
6 members of the Council then serving) and with the written
7 consent of the Secretary of the Treasury (after certifi-
8 cation by the President that an emergency exists), the
9 Corporation may create a widely-available program de-
10 signed to avoid or mitigate adverse effects on systemic eco-
11 nomic conditions or financial stability by guaranteeing ob-
12 ligations of solvent insured depository institutions or sol-
13 vent depository institution holding companies (including
14 any affiliates thereof), if necessary to prevent systemic fi-
15 nancial instability during times of severe economic dis-
16 tress, except that a guarantee of obligations under this
17 section may not include provision of equity in any form.

18 (b) POLICIES AND PROCEDURES.—Prior to exercising
19 any authority under this section, the Corporation shall es-
20 tablish policies and procedures governing the issuance of
21 guarantees. The terms and conditions of any guarantees
22 issued shall be established by the Corporation with the ap-
23 proval of the Secretary of the Treasury and the Financial
24 Stability Oversight Council. Such terms and conditions
25 may include the Corporation requiring collateral as a con-
26 dition of any such guarantee.

1 (c) CAP FOR GUARANTEED AMOUNT.—

2 (1) IN GENERAL.—In connection with any pro-
3 gram established pursuant to subsection (a) and
4 subject to paragraph (2), the Corporation may not
5 have guaranteed debt outstanding at any time of
6 more than \$500,000,000,000 (as indexed to reflect
7 growth in assets of insured depository institutions
8 and depository institution holding companies as de-
9 termined by the Corporation).

10 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
11 ITY.—If the Corporation, with the concurrence of
12 the Council and the Secretary (in consultation with
13 the President), determines that the Corporation
14 must guarantee debt in excess of \$500,000,000,000
15 (as indexed pursuant to paragraph (1)) to prevent
16 systemic financial instability, the Corporation may
17 transmit to the Congress a request for authority to
18 guarantee debt in excess of \$500,000,000,000 (as
19 indexed pursuant to paragraph (1)). Such request
20 shall be considered granted by Congress upon adop-
21 tion of a joint resolution approving such request.
22 Such joint resolution shall be considered in the Sen-
23 ate under expedited procedures.

24 (d) FUNDING.—

1 (1) ADMINISTRATIVE EXPENSES AND COST OF
2 GUARANTEES.—A program established pursuant to
3 this section shall require funding only for the pur-
4 poses of paying administrative expenses and for pay-
5 ing a guarantee in the event that a guaranteed loan
6 defaults.

7 (2) FEES AND OTHER CHARGES.—The Corpora-
8 tion shall charge fees or other charges to all partici-
9 pants in such program established pursuant to this
10 section to offset projected losses and administrative
11 expenses. To the extent that a program established
12 pursuant to this section has expenses or losses, the
13 program will be funded entirely through fees or
14 other charges assessed on participants in such pro-
15 gram.

16 (3) EXCESS FUNDS.—If at the conclusion of
17 such program there are any excess funds collected
18 from the fees associated with such program, the
19 funds will be deposited into the Systemic Dissolution
20 Fund established pursuant to section 1609(n).

21 (4) AUTHORITY OF CORPORATION.—For pur-
22 poses of conducting a program established pursuant
23 to this section, the Corporation—

24 (A) may borrow funds from the Secretary
25 of the Treasury, which shall be repaid in full

1 with interest through fees and charges paid by
2 participants in accordance with paragraph (2),
3 and there shall be available to the Corporation
4 amounts in the Treasury not otherwise appro-
5 priated, including for the payment of reasonable
6 administrative expenses;

7 (B) may not borrow funds from the De-
8 posit Insurance Fund established pursuant to
9 section 11(a)(4) of the Federal Deposit Insur-
10 ance Act; and

11 (C) may not borrow funds from the Sys-
12 temic Dissolution Fund established pursuant to
13 section 1609(n).

14 (5) BACK-UP SPECIAL ASSESSMENT.—To the
15 extent that the funds collected pursuant to para-
16 graph (2) are insufficient to cover any losses or ex-
17 penses (including monies borrowed pursuant to
18 paragraph (4)) arising from a program established
19 pursuant to this section, the Corporation shall im-
20 pose a special assessment solely on participants in
21 the program.

22 (e) PLAN FOR MAINTENANCE OR INCREASE OF
23 LENDING.—In connection with any application or request
24 to participate in such program authorized pursuant to this
25 section, a solvent entity seeking to participate in such pro-

1 gram shall be required to submit to the Corporation a plan
2 detailing how the use of such guaranteed funds will facili-
3 tate the increase or maintenance of such solvent com-
4 pany's level of lending to consumers or small businesses.

5 (f) SUNSET OF CORPORATION'S AUTHORITY.—The
6 Corporation's authority under subsections (a) and (d) and
7 the authority to borrow funds from the Treasury under
8 section 1609(o) shall expire on December 31, 2013.

9 (g) RULE OF CONSTRUCTION.—For purposes of this
10 section, a guarantee of deposits held by insured depository
11 institutions shall not be treated as a debt guarantee pro-
12 gram.

13 (h) DEFINITIONS.—For purposes of this section, the
14 following definitions apply:

15 (1) CORPORATION.—The term “Corporation”
16 means the Federal Deposit Insurance Corporation.

17 (2) DEPOSITORY INSTITUTION HOLDING COM-
18 PANY.—The term “depository institution holding
19 company” has the meaning given the term in section
20 3 of the Federal Deposit Insurance Act (12 U.S.C.
21 1813).

22 (3) INSURED DEPOSITORY INSTITUTION.—The
23 term “insured depository institution” has the mean-
24 ing given the term in section 3 of the Federal De-
25 posit Insurance Act (12 U.S.C. 1813).

1 (4) SOLVENT.—The term “solvent” means as-
2 sets are more than the obligations to creditors.

3 **SEC. 1110. ADDITIONAL RELATED AMENDMENTS.**

4 (a) FEDERAL DEPOSIT INSURANCE ACT RELATED
5 AMENDMENTS.—

6 (1) SUSPENSION OF PARALLEL FEDERAL DE-
7 POSIT INSURANCE ACT AUTHORITY.—Effective upon
8 the date of the enactment of this section through
9 December 31, 2013, the Corporation may not exer-
10 cise its authority under section 13(c)(4)(G)(i) of the
11 Federal Deposit Insurance Act (12 U.S.C.
12 1823(c)(4)(G)(i)) to establish any widely-available
13 debt guarantee program for which section 1109
14 would provide authority.

15 (2) FEDERAL DEPOSIT INSURANCE ACT AU-
16 THORITY PRESERVED.—Effective December 31,
17 2013, the Corporation shall have the same authority
18 pursuant to section 13(c)(4)(G)(i) of the Federal
19 Deposit Insurance Act as the Corporation had prior
20 to the date of enactment of this Act.

21 (b) EFFECT OF DEFAULT ON AN FDIC GUAR-
22 ANTEE.—If an insured depository institution or depository
23 institution holding company participating in a program
24 under section 1109 or any participant in a debt guarantee
25 program established pursuant to section 13(c)(4)(G)(i) of

1 the Federal Deposit Insurance Act defaults on any obliga-
2 tion guaranteed by the Corporation after the date of en-
3 actment of this Act, the Corporation may—

4 (1) appoint itself as receiver for the insured de-
5 pository institution that defaults;

6 (2) with respect to any other participating com-
7 pany that is not an insured depository institution
8 that defaults—

9 (A) require consideration of whether a de-
10 termination shall be made as provided in sec-
11 tion 1603 to resolve the company under subtitle
12 G; and

13 (B) if the Corporation is not appointed re-
14 ceiver pursuant to subtitle G within 30 days of
15 the date of default, require the company to file
16 a petition for bankruptcy under section 301 of
17 title 11, United States Code, or file a petition
18 for bankruptcy against the company under sec-
19 tion 303 of title 11, United States Code.

20 (c) AUTHORITY TO FILE INVOLUNTARY PETITION
21 FOR BANKRUPTCY.—Section 303 of title 11, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

24 “(m) Notwithstanding subsections (a) and (b), an in-
25 voluntary case may be commenced by the Federal Deposit

1 Insurance Corporation against a depository institution
 2 holding company as defined in section 3 of the Federal
 3 Deposit Insurance Act (12 U.S.C. 1813) or other company
 4 participating in a guarantee program established by the
 5 Corporation on the ground that the company has defaulted
 6 on a debt or obligation guaranteed by the Corporation.”.

7 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON
 8 DEBT GUARANTEED PURSUANT TO SECTION 1109.—Sec-
 9 tion 507(a)(9) of title 11, United States Code, is amended
 10 by inserting before the period at the end the following:
 11 “and allowed unsecured claims based upon any debt to
 12 the Federal Deposit Insurance Corporation that arose
 13 prior to the commencement of the case under this title,
 14 as a result of the debtor’s default on a guarantee provided
 15 by the Corporation pursuant to section 1109 of the Finan-
 16 cial Stability Improvement Act of 2009 or the Federal De-
 17 posit Insurance Act, under a program established by the
 18 Corporation after the date of enactment of the Financial
 19 Stability Improvement Act of 2009”.

20 **SEC. 1111. CORPORATION MAY RECEIVE WARRANTS WHEN**
 21 **PAYING OR RISKING TAXPAYER FUNDS.**

22 (a) IN GENERAL.—In connection with any payment,
 23 credit extension, or guarantee or any commitment under
 24 section 1109 or 1604, the Corporation may obtain from
 25 the insured depository institution, depository institution

1 holding company (including any affiliates thereof), or cov-
2 ered financial company, as the case may be—

3 (1) in the case of an insured depository institu-
4 tion, depository institution holding company (includ-
5 ing any affiliates thereof), or covered financial com-
6 pany, the securities of which are traded on a na-
7 tional securities exchange, a warrant giving the right
8 to the Corporation to receive nonvoting common
9 stock or preferred stock in such financial institution,
10 or voting stock with respect to which, the Corpora-
11 tion agrees not to exercise voting power, as the Cor-
12 poration determines appropriate; or

13 (2) in the case of any insured depository insti-
14 tution, depository institution holding company (in-
15 cluding any affiliates thereof), or covered financial
16 company other than one described in paragraph (1),
17 a warrant for common or preferred stock, or a sen-
18 ior debt instrument from such financial institution,
19 as described in subsection (b)(3).

20 (b) TERMS AND CONDITIONS.—The terms and condi-
21 tions of any warrant or senior debt instrument required
22 under subsection (a) shall meet the following require-
23 ments:

24 (1) PURPOSES.—Such terms and conditions
25 shall, at a minimum, be designed—

1 (A) to provide for reasonable participation
2 by the Corporation, for the benefit of taxpayers,
3 in equity appreciation in the case of a warrant
4 or other equity security, or a reasonable interest
5 rate premium, in the case of a debt instrument;
6 and

7 (B) to provide additional protection for the
8 taxpayer against losses from such payment, ex-
9 tension of credit, or guarantee by the Corpora-
10 tion under this title.

11 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-
12 RENDER.—The Corporation may sell, exercise, or
13 surrender a warrant or any senior debt instrument
14 received under this subsection, based on the condi-
15 tions established under paragraph (1).

16 (3) CONVERSION.—The warrant shall provide
17 that if, after the warrant is received by the Corpora-
18 tion under this subsection, the financial company
19 that issued the warrant is no longer listed or traded
20 on a national securities exchange or securities asso-
21 ciation, as described in subsection (a)(1), such war-
22 rants shall convert to senior debt, or contain appro-
23 priate protections for the Corporation to ensure that
24 the Corporation is appropriately compensated for the

1 value of the warrant, in an amount determined by
2 the Corporation.

3 (4) PROTECTIONS.—Any warrant representing
4 securities to be received by the Corporation under
5 this subsection shall contain anti-dilution provisions
6 of the type employed in capital market transactions,
7 as determined by the Corporation. Such provisions
8 shall protect the value of the securities from market
9 transactions such as stock splits, stock distributions,
10 dividends, and other distributions, mergers, and
11 other forms of reorganization or recapitalization.

12 (5) EXERCISE PRICE.—The exercise price for
13 any warrant issued pursuant to this subsection shall
14 be set by the Corporation, in the interest of the tax-
15 payers.

16 (6) SUFFICIENCY.—The financial company
17 shall guarantee to the Corporation that it has au-
18 thorized shares of nonvoting stock available to fulfill
19 its obligations under this subsection. Should the fi-
20 nancial company not have sufficient authorized
21 shares, including preferred shares that may carry
22 dividend rights equal to a multiple number of com-
23 mon shares, the Corporation may, to the extent nec-
24 essary, accept a senior debt note in an amount, and
25 on such terms as will compensate the Corporation

1 with equivalent value, in the event that a sufficient
2 shareholder vote to authorize the necessary addi-
3 tional shares cannot be obtained.

4 (c) EXCEPTIONS.—

5 (1) The Corporation shall establish an exception
6 to the requirements of this section and appropriate
7 alternative requirements for any participating finan-
8 cial company that is legally prohibited from issuing
9 securities and debt instruments, so as not to allow
10 circumvention of the requirements of this section.

11 (2) If the Corporation is providing a payment,
12 extension of credit, or guarantee with regard to its
13 authority under section 1604 and the Corporate de-
14 termines that it is certain that at the conclusion of
15 the Resolution Process the shareholders of all classes
16 shall lose their entire investment and receive nothing
17 therefor, then the requirements of this section shall
18 not apply.

19 **SEC. 1112. EXAMINATIONS AND ENFORCEMENT ACTIONS**
20 **FOR INSURANCE AND RESOLUTIONS PUR-**
21 **POSES.**

22 (a) EXAMINATIONS FOR INSURANCE AND RESOLU-
23 TIONS PURPOSES.—Section 10(b)(3) of the Federal De-
24 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended
25 by striking “whenever the Board of Directors determines”

1 and all that follows through the period and inserting “or
2 financial holding company subject to stricter standards (as
3 defined in section 1000(b)(5) of the Financial Stability
4 Improvement Act of 2009) whenever the Board of Direc-
5 tors determines a special examination of any such deposi-
6 tory institution is necessary to determine the condition of
7 such depository institution for insurance or such financial
8 holding company subject to stricter standards for resolu-
9 tion purposes.”.

10 (b) ENFORCEMENT AUTHORITY.—Section 8(t) of the
11 Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is
12 amended—

13 (1) in paragraph (2)—

14 (A) at the end of subparagraph (B), by
15 striking “or”;

16 (B) at the end of subparagraph (C), by
17 striking the period and inserting “; or”; and

18 (C) by inserting at the end the following
19 new subparagraph:

20 “(D) the conduct or threatened conduct
21 (including any acts or omissions) of the deposi-
22 tory institution holding company poses a risk to
23 the Deposit Insurance Fund.”; and

24 (2) by adding at the end the following new
25 paragraph:

1 “(6) For purposes of this subsection:

2 “(A) The Corporation shall have the same
3 powers with respect to a depository institution
4 holding company and its affiliates as the appro-
5 priate Federal banking agency has with respect
6 to the holding company and its affiliates; and

7 “(B) the holding company and its affiliates
8 shall have the same duties and obligations with
9 respect to the Corporation as the holding com-
10 pany and its affiliates have with respect to the
11 appropriate Federal banking agency.”.

12 **SEC. 1113. STUDY OF THE EFFECTS OF SIZE AND COM-**
13 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
14 **CAPITAL MARKET EFFICIENCY AND ECO-**
15 **NOMIC GROWTH.**

16 (a) STUDY REQUIRED.—The Chairman of the Coun-
17 cil shall carry out a study of the economic impact of pos-
18 sible financial services regulatory limitations intended to
19 reduce systemic risk. Such study shall estimate the effect
20 on the efficiency of capital markets, costs imposed on the
21 financial sector, and on national economic growth, of—

22 (1) explicit or implicit limits on the maximum
23 size of banks, bank holding companies, and other
24 large financial institutions;

1 (2) limits on the organizational complexity and
2 diversification of large financial institutions;

3 (3) requirements for operational separation be-
4 tween business units of large financial institutions in
5 order to expedite resolution in case of failure;

6 (4) limits on risk transfer between business
7 units of large financial institutions;

8 (5) requirements to carry contingent capital or
9 similar mechanisms;

10 (6) limits on commingling of commercial and fi-
11 nancial activities by large financial institutions;

12 (7) segregation requirements between tradi-
13 tional financial activities and trading or other high-
14 risk operations in large financial institutions; and

15 (8) other limitations on the activities or struc-
16 ture of large financial institutions that may be use-
17 ful to limit systemic risk.

18 The study shall include recommendations for the optimal
19 structure of any limits considered in paragraphs (1)
20 through (5) in order to maximize their effectiveness and
21 minimize their economic impact.

22 (b) REPORT.—Not later than the end of the 180-day
23 period beginning on the date of the enactment of this title,
24 the Chairman shall issue a report to the Congress con-

1 taining any findings and determinations made in carrying
2 out the study required under subsection (a).

3 **SEC. 1114. EXERCISE OF FEDERAL RESERVE AUTHORITY.**

4 (a) NO DECISIONS BY FEDERAL RESERVE BANK
5 PRESIDENTS.—No provision of this title relating to the
6 authority of the Board shall be construed as conferring
7 any decision-making authority on presidents of Federal re-
8 serve banks.

9 (b) VOTING DECISIONS BY BOARD.—The Board of
10 Governors of the Federal Reserve System shall not dele-
11 gate the authority to make any voting decision that the
12 Board is authorized or required to make under this title
13 in contravention of section 11(k) of the Federal Reserve
14 Act.

15 **SEC. 1115. STRESS TESTS.**

16 (a) A financial holding company subject to stricter
17 standards shall—

- 18 (1) conduct quarterly stress tests; and
19 (2) submit a report on its quarterly stress test
20 to the head of the primary financial regulatory agen-
21 cy and to the Board at such time, in such form, and
22 containing such information as the head of the pri-
23 mary financial regulatory agency may require.

1 (b) A financial company that has more than
2 \$10,000,000,000 in total assets and is not a financial
3 holding company subject to stricter standards shall—

4 (1) conduct semiannual stress tests; and

5 (2) submit a report on its semiannual stress
6 test to the head of the primary financial regulatory
7 agency and to the Board at such time, in such form,
8 and containing such information as the head of the
9 primary financial regulatory agency may require.

10 (c) A stress test under this section shall provide for
11 testing under each of the following sets of conditions:

12 (1) Baseline.

13 (2) Adverse.

14 (3) Severely adverse.

15 (d) The head of each primary financial regulatory
16 agency, in coordination with the Board, shall issue regula-
17 tions to define the term “stress test” for purposes of this
18 section.

19 **SEC. 1116. CONTINGENT CAPITAL.**

20 (a) IN GENERAL.—The Board, in coordination with
21 the appropriate primary financial regulatory agency, may,
22 after notice and opportunity for comment, promulgate reg-
23 ulations that require a financial holding company subject
24 to stricter standards to maintain a minimum amount of
25 long-term hybrid debt that is convertible to equity when—

1 (1) the Board determines that a specified finan-
2 cial company fails to meet prudential standards es-
3 tablished by the Board; or

4 (2) the Board has determined that threats to
5 United States financial system stability make such a
6 conversion necessary.

7 (b) FACTORS TO CONSIDER.—In establishing regula-
8 tions under this section, the Board shall consider—

9 (1) an appropriate transition period for imple-
10 mentation of a conversion under this section;

11 (2) capital requirements applicable to the speci-
12 fied financial company and its subsidiaries; and

13 (3) any other factor that the Board deems ap-
14 propriate.

15 (c) STUDY REQUIRED.—The Chairman of the Coun-
16 cil shall carry out a study to determine an optimal imple-
17 mentation of contingent capital requirements to maximize
18 financial stability, minimize the probability of drawing on
19 the Systemic Resolution Fund established under section
20 1609(n) in a financial crisis, and minimize costs for finan-
21 cial holding companies subject to stricter standards. To
22 the extent practicable, the study shall take place with
23 input from industry participants and international finan-
24 cial regulators. Such study shall include—

1 (1) an evaluation of the characteristics and
2 amounts of convertible debt that should be required,
3 including possible tranche structure;

4 (2) an analysis of possible trigger mechanisms
5 for debt conversion, including violation of regulatory
6 capital requirements, failure of stress tests, declara-
7 tion of systemic emergency by regulators, market-
8 based triggers and other trigger mechanisms;

9 (3) an estimate of the costs of carrying contin-
10 gent capital;

11 (4) an estimate of the effectiveness of contin-
12 gent capital requirements in reducing losses to the
13 systemic resolution fund in cases of single-firm or
14 systemic failure; and

15 (5) recommendations for implementing legisla-
16 tion.

17 (d) REPORT.—Not later than the end of the 180-day
18 period beginning on the date of the enactment of this title,
19 the Chairman of Council shall issue a report to the Con-
20 gress containing any findings and determinations made in
21 carrying out the study required under subsection (c).

1 **SEC. 1117. RESTRICTION ON PROPRIETARY TRADING BY**
2 **DESIGNATED FINANCIAL HOLDING COMPA-**
3 **NIES.**

4 (a) IN GENERAL.—If the Board determines that pro-
5 priety trading by a financial holding company subject to
6 stricter standards poses an existing or foreseeable threat
7 to the safety and soundness of such company or to the
8 financial stability of the United States, the Board may
9 prohibit such company from engaging in propriety trading.

10 (b) EXCEPTIONS PERMITTED.—The Board may ex-
11 empt from the prohibition of subsection (a) proprietary
12 trading that the Board determines to be ancillary to other
13 operations of such company and not to pose a threat to
14 the safety and soundness of such company or to the finan-
15 cial stability of the United States, including—

16 (1) making a market in securities issued by
17 such company;

18 (2) hedging or managing risk;

19 (3) determining the market value of assets of
20 such company; and

21 (4) propriety trading for such other purposes
22 allowed by the Board by rule.

23 (c) RULEMAKING AUTHORITY.—The primary finan-
24 cial regulatory agencies of banks and bank holding compa-
25 nies shall jointly issue regulations to carry out this section.

1 (d) EFFECTIVE DATE.—The provisions of this sec-
2 tion shall take effect after the end of the 180-day period
3 beginning on the date of the enactment of this title.

4 (e) PROPRIETARY TRADING DEFINED.—For pur-
5 poses of this section and with respect to a company, the
6 term “proprietary trading” means the trading of stocks,
7 bonds, options, commodities, derivatives, or other financial
8 instruments with the company’s own money and for the
9 company’s own account.

10 **SEC. 1118. RULE OF CONSTRUCTION.**

11 (a) CONSTRUCTION.—The authorities granted to
12 agencies under this subtitle are in addition to any rule-
13 making, report-related, examination, enforcement, or
14 other authority that such agencies may have under other
15 law and in no way shall be construed to limit such other
16 authority, except that any standards imposed for financial
17 stability purposes under this subtitle shall supersede any
18 conflicting less stringent requirements of the primary fi-
19 nancial regulatory agency but only the extent of the con-
20 flict.

21 (b) AGENT RESPONSIBILITIES.—For purposes of this
22 subtitle, the term “agent” means the Board acting under
23 section 1103(c) and coordinating with the Council in exer-
24 cising authority under sections 1104 and 1107.

1 **SEC. 1119. ANTITRUST SAVINGS CLAUSE.**

2 Nothing in this subtitle shall be construed to modify,
3 impair, or supercede the operation of any of the antitrust
4 laws. For purposes of the preceding sentence, the term
5 “antitrust laws” has the meaning given such term in sub-
6 section (a) of the first section of the Clayton Act, except
7 that such term includes section 5 of the Federal Trade
8 Commission Act to the extent that such section relates to
9 unfair methods of competition.

10 **Subtitle C—Improvements to Su-**
11 **pervision and Regulation of**
12 **Federal Depository Institutions**

13 **SEC. 1201. DEFINITIONS.**

14 For purposes of this subtitle, the following definitions
15 shall apply:

16 (1) BOARD OF GOVERNORS.—The term “Board
17 of Governors” means the Board of Governors of the
18 Federal Reserve System.

19 (2) CORPORATION.—The term “Corporation”
20 means the Federal Deposit Insurance Corporation.

21 (3) OFFICE OF THE COMPTROLLER OF THE
22 CURRENCY.—The term “Office of the Comptroller of
23 the Currency” means the office established by sec-
24 tion 324 of the Revised Statutes (12 U.S.C. 1).

25 (4) OFFICE OF THRIFT SUPERVISION.—The
26 term “Office of Thrift Supervision” means the office

1 established by section 3 of the Home Owners' Loan
2 Act (12 U.S.C. 1462a).

3 (5) SECRETARY.—The term “Secretary” means
4 the Secretary of the Treasury.

5 (6) TRANSFER DATE.—The term “transfer
6 date” has the meaning provided in section 1205.

7 (7) CERTAIN OTHER TERMS.—The terms “affil-
8 iate”, “bank holding company”, “control” (when
9 used with respect to a depository institution), “de-
10 pository institution”, “Federal banking agency”,
11 “Federal savings association”, “including”, “insured
12 branch”, “insured depository institution”, “savings
13 association”, “State savings association”, and “sub-
14 sidiary” have the same meanings as in section 3 of
15 the Federal Deposit Insurance Act.

16 **SEC. 1202. AMENDMENTS TO THE HOME OWNERS' LOAN**
17 **ACT RELATING TO TRANSFER OF FUNCTIONS.**

18 (a) AMENDMENTS TO SECTION 2.—Section 2 of the
19 Home Owners' Loan Act (12 U.S.C. 1462) is amended—

20 (1) by striking paragraph (1) and inserting the
21 following new paragraph:

22 “(1) BOARD OF GOVERNORS.—The term ‘Board
23 of Governors’ means the Board of Governors of the
24 Federal Reserve System.”; and

1 (2) by striking paragraph (3) and inserting the
2 following new paragraph:

3 “(3) [repealed]”.

4 (b) AMENDMENTS TO SECTION 3.—Section 3 of the
5 Home Owners’ Loan Act (12 U.S.C. 1462a) is amended—

6 (1) by striking subsection (a) and inserting the
7 following new subsection:

8 “(a) ESTABLISHMENT OF DIVISION OF THRIFT SU-
9 PERVISION.—To carry out the purposes of this Act, there
10 is hereby established the Division of Thrift Supervision,
11 which shall be a division within the Office of the Comp-
12 troller of the Currency.”;

13 (2) in subsection (b)—

14 (A) by striking paragraph (1) and insert-
15 ing the following new paragraph:

16 “(1) IN GENERAL.—The Division of Thrift Su-
17 pervision shall be headed by a Senior Deputy Comp-
18 troller of the Currency who shall be subject to the
19 general oversight of the Comptroller of the Cur-
20 rency.”;

21 (B) in paragraph (2), by striking “Direc-
22 tor” and inserting “Comptroller of the Cur-
23 rency”; and

24 (C) by striking paragraphs (3) and (4);

1 (3) by striking subsections (c), (d), and (e) and
2 inserting the following new subsection:

3 “(c) POWERS OF THE COMPTROLLER OF THE CUR-
4 RENCY.—The Comptroller of the Currency shall have all
5 the powers, duties, and functions transferred by the Fi-
6 nancial Stability Improvement Act of 2009 to the Comp-
7 troller of the Currency to carry out this Act.”;

8 (4) by redesignating subsections (f) and (i) as
9 subsections (d) and (e), respectively;

10 (5) in subsection (d) (as so redesignated), by
11 striking “Director” each place such term appears
12 and inserting “Comptroller of the Currency”;

13 (6) by striking subsections (g), (h), and (j); and

14 (7) in subsection (e) (as so redesignated), by
15 striking “compensation of the Director and other
16 employees of the Office and all other expenses there-
17 of” and inserting “expenses incurred by the Comp-
18 troller of the Currency in carrying out this Act”.

19 (c) AMENDMENTS TO SECTION 4.—Section 4 of the
20 Home Owners’ Loan Act (12 U.S.C. 1463) is amended
21 by striking “Director” each time it appears and inserting
22 “Comptroller of the Currency”.

23 (d) AMENDMENTS TO SECTION 5.—

24 (1) UNIVERSAL.—Section 5 of the Home Own-
25 ers’ Loan Act (12 U.S.C. 1464) is amended—

1 (A) by striking “Director” and “Director
2 of the Office of Thrift Supervision” each place
3 such terms appear and inserting “Comptroller
4 of the Currency”; and

5 (B) by striking “Director’s” each place
6 such term appears and inserting “Comptroller
7 of the Currency’s”.

8 (2) SPECIFIC PROVISIONS.—

9 (A) Section 5(d)(2)(E) of the Home Own-
10 ers’ Loan Act is amended by striking “or the
11 Resolution Trust Corporation, as appropriate,”
12 each place such term appears.

13 (B) Section 5(d)(3)(B) of the Home Own-
14 ers’ Loan Act is amended by striking “or the
15 Resolution Trust Corporation”.

16 (e) AMENDMENTS TO SECTIONS 8 AND 9.—Sections
17 8 and 9 of the Home Owners’ Loan Act (12 U.S.C. 1466a
18 and 1467) are each amended by striking “Director” each
19 place such term appears and inserting “Comptroller of the
20 Currency”.

21 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) SECTION 3.—The heading for section 3 of
23 the Home Owners’ Loan Act is amended by striking
24 **“DIRECTOR OF THE OFFICE OF THRIFT SUPER-**

1 **VISION**” and inserting “**DIVISION OF THRIFT SU-**
 2 **PERVISION**”.

3 (2) SECTION 5.—The heading for paragraph
 4 (2)(E)(ii) of section 5(d) of the Home Owners’ Loan
 5 Act and the heading for paragraph (3)(B) of such
 6 section are each amended by striking “OR RTC”.

7 (g) CLERICAL AMENDMENT.—The table of contents
 8 section for the Home Owners’ Loan Act is amended by
 9 striking the item relating to section 3 and inserting the
 10 following new item:

“Sec. 3. Division of Thrift Supervision.”.

11 **SEC. 1203. AMENDMENTS TO THE REVISED STATUTES.**

12 (a) AMENDMENT TO SECTION 324.—Section 324 of
 13 the Revised Statutes of the United States (12 U.S.C. 1)
 14 is amended to read as follows:

15 **“SEC. 324. COMPTROLLER OF THE CURRENCY.**

16 “There shall be in the Department of the Treasury
 17 a bureau, the chief officer of which bureau shall be called
 18 the Comptroller of the Currency, and shall perform the
 19 duties of the Comptroller of the Currency under the gen-
 20 eral direction of the Secretary of the Treasury. The Comp-
 21 troller of the Currency shall have the same authority over
 22 matters as were vested in the Director of the Office of
 23 Thrift Supervision or the Office of Thrift Supervision on
 24 the day before the date of enactment of the Financial Sta-
 25 bility Improvement Act of 2009 other than those authori-

1 ties with respect to savings and loan holding companies
2 and any affiliate of any such company (other than a sav-
3 ings association) as were vested in the Director of the Of-
4 fice of Thrift Supervision on such date. The Secretary of
5 the Treasury may not delay or prevent the issuance of any
6 rule or the promulgation of any regulation by the Comp-
7 troller of the Currency and may not intervene in any mat-
8 ter or proceeding before the Comptroller of the Currency
9 (including agency enforcement actions) unless otherwise
10 specifically provided by law.”.

11 (b) AMENDMENTS TO SECTION 327.—Section 327 of
12 the Revised Statutes of the United States (12 U.S.C. 4)
13 is amended to read as follows:

14 **“SEC. 327. DEPUTY COMPTROLLERS.**

15 “(a) APPOINTMENT.—The Secretary of the Treasury
16 shall appoint no more than 5 Deputy Comptrollers of the
17 Currency—

18 “(1) 1 of whom shall be designated the Senior
19 Deputy Comptroller for National Banks, who shall
20 oversee the regulation and supervision of national
21 banks; and

22 “(2) 1 of whom shall be designated the Senior
23 Deputy Comptroller for Thrift Supervision, who
24 shall oversee the regulation and supervision of Fed-
25 eral savings associations, and who shall coordinate

1 with the Office of Thrift Supervision pursuant to
2 section 1211.

3 “(b) PAY.—The Secretary of the Treasury shall fix
4 the compensation of the Deputy Comptrollers of the Cur-
5 rency and provide such other benefits as the Secretary
6 may determine to be appropriate.

7 “(c) OATH OF OFFICE; DUTIES.—Each Deputy
8 Comptroller shall take the oath of office and shall perform
9 such duties as the Comptroller of the Currency shall di-
10 rect.

11 “(d) SERVICE AS ACTING COMPTROLLER.—During a
12 vacancy in the office or during the absence or disability
13 of the Comptroller, each Deputy Comptroller shall possess
14 the power and perform the duties attached by law to the
15 Office of the Comptroller under such order of succession
16 as the Comptroller shall direct.”.

17 (c) AMENDMENT TO SECTION 329.—Section 329 of
18 the Revised Statutes of the United States (12 U.S.C. 11)
19 is amended by inserting “or any Federal savings associa-
20 tion” before the period at the end.

21 (d) AMENDMENT TO SECTION 5240.—The fourth
22 sentence of the second undesignated paragraph of Section
23 5240 of the Revised Statutes of the United States (12
24 U.S.C. 481) is amended by striking “Secretary of the
25 Treasury;” and all that follows through the end of the sen-

1 tence, and inserting “Secretary of the Treasury; the em-
 2 ployment and compensation of examiners, chief examiners,
 3 reviewing examiners, assistant examiners, and of the other
 4 employees of the office of the Comptroller of the Currency
 5 whose compensation is and shall be paid from assessments
 6 on banks or affiliates thereof or from other fees or charges
 7 imposed pursuant to this subchapter shall be set and ad-
 8 justed pursuant to chapter 71 of title 5, United States
 9 Code and without regard to the provisions of other laws
 10 applicable to officers or employees of the United States.”.

11 (e) AMENDMENT TO SECTION 5240.—The first sen-
 12 tence in the first undesignated paragraph of Section 5240
 13 of the Revised Statutes of the United States (12 U.S.C.
 14 482) is amended by inserting “pursuant to chapter 71 of
 15 title 5, United States Code,” after “shall,”.

16 (f) EFFECTIVE DATE.—Subsection (b) shall take ef-
 17 fect on the date of the enactment of this Act.

18 **SEC. 1204. POWER AND DUTIES TRANSFERRED.**

19 (a) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
 20 VISION.—

21 (1) TRANSFER OF FUNCTIONS.—Except as oth-
 22 erwise provided in this subtitle, all functions of the
 23 Director of the Office of Thrift Supervision are
 24 transferred to the Office of the Comptroller of the
 25 Currency.

1 (2) COMPTROLLER'S AUTHORITY.—Except as
2 otherwise provided in this subtitle, the Comptroller
3 of the Currency shall succeed to all powers, authori-
4 ties, rights, and duties that were vested in the Direc-
5 tor of the Office of Thrift Supervision under Federal
6 law, including the Home Owners' Loan Act, on the
7 day before the transfer date other than those pow-
8 ers, authorities, rights, and duties with respect to
9 savings and loan holding companies and any affiliate
10 of any such company (other than a savings associa-
11 tion) as were vested in the Director of the Office of
12 Thrift Supervision on such date.

13 (3) FUNCTIONS RELATING TO SUPERVISION OF
14 STATE SAVINGS ASSOCIATIONS.—

15 (A) TRANSFER OF FUNCTIONS.—All func-
16 tions of the Director of the Office of Thrift Su-
17 pervision relating to the supervision and regula-
18 tion of State savings associations are trans-
19 ferred to the Corporation.

20 (B) CORPORATION'S AUTHORITY.—The
21 Corporation shall succeed to all powers, au-
22 thorities, rights, and duties that were vested in
23 the Director of the Office of Thrift Supervision
24 under Federal law, including the Home Owners'
25 Loan Act, on the day before the transfer date,

1 relating to the supervision and regulation of
2 State savings associations.

3 (4) FUNCTIONS RELATING TO SUPERVISION OF
4 SAVINGS AND LOAN HOLDING COMPANIES.—

5 (A) TRANSFER OF FUNCTIONS.—All func-
6 tions of the Director of the Office of Thrift Su-
7 pervision relating to the supervision and regula-
8 tion of Savings and Loan Holding Companies
9 are transferred to the Board.

10 (B) BOARD AUTHORITY.—The Board shall
11 succeed to all powers, authorities, rights, and
12 duties that were vested in the Director of the
13 Office of Thrift Supervision under Federal law,
14 including the Home Owners' Loan Act, on the
15 day before the transfer date, relating to the su-
16 pervision and regulation of Savings and Loan
17 Holding Companies.

18 (b) APPROPRIATE FEDERAL BANKING AGENCY.—
19 Section 3 of the Federal Deposit Insurance Act (12 U.S.C.
20 1813) is amended in subsection (q)—

21 (1) by amending paragraph (1) to read as fol-
22 lows:

23 “(1) the Comptroller of the Currency in the
24 case of any national bank, Federal savings associa-

1 tion or any Federal branch or agency of a foreign
2 bank;”;

3 (2) in paragraph (2)(E), by striking “and” at
4 the end;

5 (3) in paragraph (2)(F), by adding “and” at
6 the end after the semicolon;

7 (4) after paragraph (2)(F), by inserting the fol-
8 lowing new subparagraph:

9 “(G) any savings and loan holding com-
10 pany and any subsidiary of a savings and loan
11 holding company (other than a savings associa-
12 tion); and”;

13 (5) by amending paragraph (3) to read as fol-
14 lows:

15 “(3) the Federal Deposit Insurance Corporation
16 in the case of a State nonmember insured bank, a
17 State savings association or a foreign bank having
18 an insured branch.”; and

19 (6) by striking paragraph (4).

20 (c) TRANSFER OF CONSUMER FINANCIAL PROTEC-
21 TION FUNCTIONS.—Nothing in subsection (a) or (b) shall
22 affect any transfer of consumer financial protection func-
23 tions of the Comptroller of the Currency and the Director
24 of the Office of Thrift Supervision to the Consumer Finan-

1 cial Protection Agency as provided in the Consumer Fi-
2 nancial Protection Agency Act of 2009.

3 (d) EFFECTIVE DATE.—Subsections (a) and (b) shall
4 become effective on the transfer date.

5 **SEC. 1205. TRANSFER DATE.**

6 (a) IN GENERAL.—Except as provided in subsection
7 (b), the date for the transfer of functions to the Office
8 of the Comptroller of the Currency and the Corporation
9 under section 1204 shall be 1 year after the date of enact-
10 ment of this title.

11 (b) EXTENSION PERMITTED.—

12 (1) NOTICE REQUIRED.—The Secretary, in con-
13 sultation with the Comptroller of the Currency and
14 the Director of the Office of Thrift Supervision, may
15 designate a calendar date for the transfer of func-
16 tions of the Office of Thrift Supervision to the Of-
17 fice of the Comptroller of the Currency, and the Cor-
18 poration under section 1204 that is later than 1
19 year after the date of enactment of this title if the
20 Secretary—

21 (A) transmits to the Committee on Bank-
22 ing, Housing, and Urban Affairs of the Senate
23 and the Committee on Financial Services of the
24 House of Representatives—

1 (i) a written determination that or-
2 derly implementation of this subtitle is not
3 feasible on the date that is 1 year after the
4 date of enactment of this subtitle;

5 (ii) an explanation of why an exten-
6 sion is necessary for the orderly implemen-
7 tation of this subtitle; and

8 (iii) a description of the steps that will
9 be taken to effect an orderly and timely
10 implementation of this subtitle within the
11 extended time period; and

12 (B) publishes notice of that designated
13 later date in the Federal Register.

14 (2) EXTENSION LIMITED.—In no case shall any
15 date designated under paragraph (1) be later than
16 18 months after the date of enactment of this sub-
17 title.

18 (3) EFFECT ON REFERENCES TO “TRANSFER
19 DATE”.—If the Secretary takes the actions provided
20 in paragraph (1) for designating a date for the
21 transfer of functions to the Office of the Comptroller
22 of the Currency, and the Corporation under section
23 1204, references in this title to “transfer date” shall
24 mean the date designated by the Secretary.

1 **SEC. 1206. EXPIRATION OF TERM OF COMPTROLLER.**

2 (a) IN GENERAL.—Notwithstanding section 325 of
3 the Revised Statutes of the United States, the term of the
4 person serving as Comptroller on the date of the enact-
5 ment of this title shall terminate as of such date.

6 (b) ACTING COMPTROLLER.—Subject to sections
7 3345, 3346, and 3347 of title 5, United States Code, the
8 President may designate a person to serve as acting
9 Comptroller and perform the functions and duties of the
10 Comptroller until a Comptroller has been appointed and
11 qualified in the manner established in section 325 of the
12 Revised Statutes of the United States.

13 **SEC. 1207. OFFICE OF THRIFT SUPERVISION ABOLISHED.**

14 Effective 90 days after the transfer date, the position
15 of Director of the Office of Thrift Supervision and the Of-
16 fice of Thrift Supervision are abolished.

17 **SEC. 1208. SAVINGS PROVISIONS.**

18 (a) OFFICE OF THRIFT SUPERVISION.—

19 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
20 TIONS NOT AFFECTED.—Sections 1204(a) and 1207
21 shall not affect the validity of any right, duty, or ob-
22 ligation of the United States, the Director of the Of-
23 fice of Thrift Supervision, the Office of Thrift Su-
24 pervision, or any other person, that existed on the
25 day before the transfer date.

1 (2) CONTINUATION OF SUITS.—This subtitle
2 shall not abate any action or proceeding commenced
3 by or against the Director of the Office of Thrift Su-
4 pervision or the Office of Thrift Supervision before
5 the transfer date, except that—

6 (A) for any action or proceeding arising
7 out of a function of the Director of the Office
8 of Thrift Supervision transferred to the Comp-
9 troller of the Currency by this title, the Comp-
10 troller of the Currency or the Office of the
11 Comptroller of the Currency shall be sub-
12 stituted for the Director of the Office of Thrift
13 Supervision or the Office of Thrift Supervision,
14 as the case may be, as a party to the action or
15 proceeding as of the transfer date; and

16 (B) for any action or proceeding arising
17 out of a function of the Director of the Office
18 of Thrift Supervision transferred to the Cor-
19 poration by this title, the Chairman of the Cor-
20 poration shall be substituted for the Director of
21 the Office of Thrift Supervision as a party to
22 the action or proceeding as of the transfer date.

23 (b) CONTINUATION OF EXISTING OTS ORDERS, RES-
24 OLUTIONS, DETERMINATIONS, AGREEMENTS, REGULA-
25 TIONS, ETC.—All orders, resolutions, determinations,

1 agreements, and regulations, interpretative rules, other in-
2 terpretations, guidelines, procedures, and other advisory
3 materials, that have been issued, made, prescribed, or al-
4 lowed to become effective by the Office of Thrift Super-
5 vision, or by a court of competent jurisdiction, in the per-
6 formance of functions that are transferred by this title and
7 that are in effect on the day before the transfer date, shall
8 continue in effect according to the terms of those orders,
9 resolutions, determinations, agreements, and regulations,
10 interpretative rules, other interpretations, guidelines, pro-
11 cedures, and other advisory materials, and shall be en-
12 forceable by or against—

13 (1) the Office of the Comptroller of the Cur-
14 rency, in the case of a function of the Director of
15 the Office of Thrift Supervision transferred to the
16 Comptroller of the Currency, until modified, termi-
17 nated, set aside, or superseded in accordance with
18 applicable law by the Office of the Comptroller of
19 the Currency, by any court of competent jurisdic-
20 tion, or by operation of law; and

21 (2) the Corporation, in the case of a function
22 of the Director of the Office of Thrift Supervision
23 transferred to the Corporation, until modified, termi-
24 nated, set aside, or superseded in accordance with

1 applicable law by the Corporation, by any court of
2 competent jurisdiction, or by operation of law.

3 (c) CONTINUATION OF EXISTING OTS ENFORCE-
4 MENT ACTIONS.—Any formal or informal enforcement ac-
5 tion taken by the Director of the Office of Thrift Super-
6 vision with respect to a savings and loan holding company,
7 a subsidiary of a savings and loan holding company (other
8 than a savings association) or an institution-affiliated
9 party of a savings and loan holding company or such a
10 subsidiary, that is in effect on the day before the date of
11 the enactment of this title shall continue to be effective
12 and enforceable against such company, subsidiary, or in-
13 stitution-affiliated party after such date as if—

14 (1) such savings and loan holding company, or
15 the savings and loan holding company related to
16 such subsidiary or institution-affiliated party, had
17 been a bank holding company on the effective date
18 of the final enforcement action; and

19 (2) the action had been taken by the Board, un-
20 less otherwise terminated or modified by the Board.

21 (d) IDENTIFICATION OF REGULATIONS CONTIN-
22 UED.—

23 (1) BY OFFICE OF THE COMPTROLLER OF THE
24 CURRENCY.—Not later than the transfer date, the
25 Comptroller of the Currency shall—

1 (A) after consultation with the Chairperson
2 of the Corporation, identify the regulations con-
3 tinued under subsection (b) that will be en-
4 forced by the Office of the Comptroller of the
5 Currency; and

6 (B) publish a list of such regulations in the
7 Federal Register.

8 (2) BY THE CORPORATION.—Not later than the
9 transfer date, the Corporation shall—

10 (A) after consultation with the Office of
11 the Comptroller of the Currency, identify the
12 regulations continued under subsection (b) that
13 will be enforced by the Corporation; and

14 (B) publish a list of such regulations in the
15 Federal Register.

16 (e) STATUS OF REGULATIONS PROPOSED OR NOT
17 YET EFFECTIVE.—

18 (1) PROPOSED REGULATIONS.—Any proposed
19 regulation of the Office of Thrift Supervision, which
20 that agency, in performing functions transferred by
21 this title, has proposed before the transfer date but
22 has not published as a final regulation before that
23 date, shall be deemed to be a proposed regulation of
24 the Office of the Comptroller of the Currency, or the
25 Corporation, as appropriate, according to its terms.

1 (2) REGULATIONS NOT YET EFFECTIVE.—Any
2 interim or final regulation of the Office of Thrift Su-
3 pervision, which that agency, in performing func-
4 tions transferred by this title, has published before
5 the transfer date but which has not become effective
6 before that date, shall become effective as a regula-
7 tion of the Office of the Comptroller of the Cur-
8 rency, or the Corporation, as appropriate, according
9 to its terms.

10 **SEC. 1209. REGULATIONS AND ORDERS.**

11 In addition to any powers transferred to the Comp-
12 troller of the Currency by this title, the Comptroller of
13 the Currency may prescribe such regulations and issue
14 such orders as the Comptroller of the Currency determines
15 to be appropriate to carry out this title and the powers
16 and duties transferred to the Comptroller of the Currency
17 by this title.

18 **SEC. 1210. COORDINATION OF TRANSITION ACTIVITIES.**

19 Before the transfer date, the Comptroller of the Cur-
20 rency shall—

21 (1) consult and cooperate with the Office of
22 Thrift Supervision to facilitate the orderly transfer
23 of functions to the Comptroller of the Currency;

24 (2) determine and redetermine, from time to
25 time—

1 (A) the amount of funds necessary to pay
 2 any expenses associated with the transfer of
 3 functions (including expenses for personnel,
 4 property, and administrative services) during
 5 the period beginning on the date of enactment
 6 of this title and ending on the transfer date;

7 (B) what personnel are appropriate to fa-
 8 cilitate the orderly transfer of functions by this
 9 title; and

10 (C) what property and administrative serv-
 11 ices are necessary to support the Office of the
 12 Comptroller of the Currency during the period
 13 beginning on the date of enactment of this title
 14 and ending on the transfer date; and

15 (3) take such actions as may be necessary to
 16 provide for the orderly implementation of this title.

17 **SEC. 1211. INTERIM RESPONSIBILITIES OF OFFICE OF THE**
 18 **COMPTROLLER OF THE CURRENCY AND OF-**
 19 **FIGE OF THRIFT SUPERVISION.**

20 (a) IN GENERAL.—When requested by the Comp-
 21 troller of the Currency to do so before the transfer date,
 22 the Office of Thrift Supervision shall—

23 (1) pay to the Comptroller of the Currency,
 24 from funds obtained by the Office of Thrift Super-
 25 vision through assessments, fees, or other charges

1 that the Office of Thrift Supervision is authorized
2 by law to impose, such amounts that the Comp-
3 troller of the Currency determines to be necessary
4 under section 1210(2)(A);

5 (2) detail to the Office of the Comptroller of the
6 Currency such personnel as the Comptroller of the
7 Currency determines to be appropriate under section
8 1210(2)(B); and

9 (3) make available to the Office of the Comp-
10 troller of the Currency such property and provide
11 the Office of the Comptroller of the Currency such
12 administrative services as the Comptroller of the
13 Currency determines to be necessary under section
14 1210(2)(C).

15 (b) NOTICE REQUIRED.—The Comptroller of the
16 Currency shall give the Office of Thrift Supervision rea-
17 sonable prior notice of any request that the Office of the
18 Comptroller of the Currency intends to make under sub-
19 section (a).

20 **SEC. 1212. EMPLOYEES TRANSFERRED.**

21 (a) IN GENERAL.—

22 (1) OTS EMPLOYEES.—

23 (A) IN GENERAL.—All employees of the
24 Office of Thrift Supervision shall be transferred

1 to either the Comptroller of the Currency or the
2 Corporation for employment.

3 (B) ALLOCATING EMPLOYEES FOR TRANS-
4 FER TO RECEIVING AGENCIES.—The Director of
5 the Office of Thrift Supervision, the Comp-
6 troller of the Currency, and the Chairperson of
7 the Corporation shall—

8 (i) jointly determine the number of
9 employees of the Office of Thrift Super-
10 vision necessary to perform or support—

11 (I) the functions of the Office of
12 Thrift Supervision that are trans-
13 ferred to the Office of the Comptroller
14 of the Currency by this title; and

15 (II) the functions of the Office of
16 Thrift Supervision that are trans-
17 ferred to the Corporation by this title;

18 (ii) consistent with the numbers deter-
19 mined under clause (ii), jointly identify
20 employees of the Office of Thrift Super-
21 vision for transfer to the Office of the
22 Comptroller of the Currency or the Cor-
23 poration in a manner that the Director of
24 the Office of Thrift Supervision, the Comp-
25 troller of the Currency, and the Chair-

1 person of the Corporation, in their discre-
2 tion, deem equitable.

3 (2) TRANSFER OF EMPLOYEES PERFORMING
4 CONSUMER FINANCIAL PROTECTION FUNCTIONS.—

5 Nothing in paragraph (1) shall affect the transfer of
6 employees performing or supporting consumer finan-
7 cial protection functions of the Comptroller of the
8 Currency and the Director of the Office of Thrift
9 Supervision to the Consumer Financial Protection
10 Agency as provided in the Consumer Financial Pro-
11 tection Agency Act of 2009.

12 (3) APPOINTMENT AUTHORITY FOR EXCEPTED
13 SERVICE TRANSFERRED.—

14 (A) IN GENERAL.—In the case of employ-
15 ees occupying positions in the excepted service,
16 any appointment authority established pursuant
17 to law or regulations of the Office of Personnel
18 Management for filling such positions shall be
19 transferred, subject to subparagraph (B).

20 (B) DECLINING TRANSFERS ALLOWED.—

21 The Office of the Comptroller of the Currency
22 and the Corporation may decline to accept a
23 transfer of authority under subparagraph (A)
24 (and the employees appointed pursuant thereto)
25 to the extent that such authority relates to posi-

1 tions excepted from the competitive service be-
2 cause of their confidential, policy-making, pol-
3 icy-determining, or policy-advocating character.

4 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
5 MENTS.—Each employee to be transferred under this sec-
6 tion shall—

7 (1) be transferred not later than 90 days after
8 the transfer date; and

9 (2) receive notice of his or her position assign-
10 ment not later than 120 days after the effective date
11 of his or her transfer.

12 (c) TRANSFER OF FUNCTION.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, the transfer of employees shall be
15 deemed a transfer of functions for the purpose of
16 section 3503 of title 5, United States Code.

17 (2) PRIORITY OF THIS SUBTITLE.—If any pro-
18 vision of this subtitle conflicts with any protection
19 provided to transferred employees under section
20 3503 of title 5, United States Code, the provisions
21 of this subtitle shall control.

22 (d) EMPLOYEES' STATUS AND ELIGIBILITY.—The
23 transfer of functions and employees under this title, and
24 the abolition of the Office of Thrift Supervision, shall not
25 affect the status of the transferred employees as employ-

1 ees of an agency of the United States under any provision
2 of law.

3 (e) EQUAL STATUS AND TENURE POSITIONS.—Each
4 employee transferred from the Office of Thrift Supervision
5 shall be placed in a position at either the Office of the
6 Comptroller of the Currency or the Corporation with the
7 same status and tenure as he or she held on the day before
8 the transfer date.

9 (f) NO ADDITIONAL CERTIFICATION REQUIRE-
10 MENTS.—Examiners transferred to the Office of the
11 Comptroller of the Currency or the Corporation shall not
12 be subject to any additional certification requirements be-
13 fore being placed in a comparable examiner's position at
14 the Office of the Comptroller of the Currency or the Cor-
15 poration examining the same types of institutions as they
16 examined before they were transferred.

17 (g) PERSONNEL ACTIONS LIMITED.—

18 (1) 3-YEAR PROTECTION.—

19 (A) IN GENERAL.—Except as provided in
20 paragraph (2), each affected employee shall not,
21 during the 3-year period beginning on the
22 transfer date, be involuntarily separated, or in-
23 voluntarily reassigned outside his or her locality
24 pay area as defined by the Office of Personnel
25 Management.

1 (B) AFFECTED EMPLOYEES.—For pur-
2 poses of this paragraph, the term “affected em-
3 ployee” means—

4 (i) an employee transferred from the
5 Office of Thrift Supervision holding a per-
6 manent position on the day before the
7 transfer date; and

8 (ii) an employee of the Office of the
9 Comptroller of the Currency holding a per-
10 manent position on the day before the
11 transfer date.

12 (2) EXCEPTIONS.—Paragraph (1) does not
13 limit the right of the Office of the Comptroller of the
14 Currency or the Corporation to—

15 (A) separate an employee for cause or for
16 unacceptable performance; or

17 (B) terminate an appointment to a position
18 excepted from the competitive service because of
19 its confidential policy-making, policy-deter-
20 mining, or policy-advocating character.

21 (h) PAY.—

22 (1) 1-YEAR PROTECTION.—Except as provided
23 in paragraph (2), each employee transferred from
24 the Office of Thrift Supervision shall, during the 1-
25 year period beginning on the transfer date, receive

1 pay at a rate not less than the basic rate of pay (in-
2 cluding any geographic differential) that the em-
3 ployee received during the 1-year period immediately
4 before the transfer.

5 (2) EXCEPTIONS.—Paragraph (1) does not
6 limit the right of the Office of the Comptroller of the
7 Currency or the Corporation to reduce a transferred
8 employee's rate of basic pay—

9 (A) for cause;

10 (B) for unacceptable performance; or

11 (C) with the employee's consent.

12 (3) PROTECTION ONLY WHILE EMPLOYED.—
13 Paragraph (1) applies to a transferred employee
14 only while that employee remains employed by the
15 Office of the Comptroller of the Currency or the
16 Corporation.

17 (4) PAY INCREASES PERMITTED.—Paragraph
18 (1) does not limit the authority of the Office of the
19 Comptroller of the Currency or the Corporation to
20 increase a transferred employee's pay.

21 (i) BENEFITS.—

22 (1) RETIREMENT BENEFITS FOR TRANSFERRED
23 EMPLOYEES.—

24 (A) IN GENERAL.—

1 (i) CONTINUATION OF EXISTING RE-
2 TIREMENT PLAN.—Each employee trans-
3 ferred from the Office of Thrift Super-
4 vision may remain enrolled in his or her
5 existing retirement plan or plans as long as
6 he or she remains employed by the Office
7 of the Comptroller of the Currency or the
8 Corporation.

9 (ii) EMPLOYER’S CONTRIBUTION.—
10 The Office of the Comptroller of the Cur-
11 rency or the Corporation shall pay any em-
12 ployer contributions to the existing retire-
13 ment plan of each employee transferred
14 from the Office of Thrift Supervision as
15 required under that plan.

16 (B) DEFINITION.—For purposes of this
17 paragraph, the term “existing retirement plan”
18 means, with respect to any employee trans-
19 ferred under this section, the particular retire-
20 ment plan (including the Financial Institutions
21 Retirement Fund) and any associated thrift
22 savings plan of the agency from which the em-
23 ployee was transferred, which the employee was
24 enrolled in on the day before the transfer date.

1 (2) BENEFITS OTHER THAN RETIREMENT BEN-
2 EFITS.—

3 (A) DURING 1ST YEAR.—

4 (i) EXISTING PLANS CONTINUE.—

5 Each transferred employee may, for 1 year
6 after the transfer date, retain membership
7 in any other employee benefit program of
8 the Office of Thrift Supervision, including
9 a dental, vision, long term care, or life in-
10 surance program, to which the employee
11 belonged on the day before the transfer
12 date.

13 (ii) EMPLOYER'S CONTRIBUTION.—

14 The Office of the Comptroller of the Cur-
15 rency or the Corporation shall pay any em-
16 ployer cost in continuing to extend cov-
17 erage in the benefit program to the em-
18 ployee as required under that program or
19 negotiated agreements.

20 (B) DENTAL, VISION, OR LIFE INSURANCE
21 AFTER 1ST YEAR.—If, after the 1-year period
22 beginning on the transfer date, the Office of the
23 Comptroller of the Currency or the Corporation
24 decides not to continue participation in any
25 dental, vision, or life insurance program of the

1 Office of Thrift Supervision, an employee trans-
2 ferred from the Office of Thrift Supervision
3 pursuant to this title who is a member of such
4 a program may, before the decision of the Of-
5 fice of the Comptroller of the Currency or the
6 Corporation takes effect, elect to enroll, without
7 regard to any regularly scheduled open season,
8 in—

9 (i) the enhanced dental benefits pro-
10 gram established by chapter 89A of title 5,
11 United States Code;

12 (ii) the enhanced vision benefits estab-
13 lished by chapter 89B of title 5, United
14 States Code; and

15 (iii) the Federal Employees Group
16 Life Insurance Program established by
17 chapter 87 of title 5, United States Code,
18 without regard to any requirement of in-
19 surability.

20 (C) LONG TERM CARE INSURANCE AFTER
21 1ST YEAR.—If, after the 1-year period begin-
22 ning on the transfer date, the Office of the
23 Comptroller of the Currency or the Corporation
24 decides not to continue participation in any
25 long term care insurance program of the Office

1 of Thrift Supervision, an employee transferred
2 from the Office of Thrift Supervision pursuant
3 to this title who is a member of such a program
4 may, before the decision of the Office of the
5 Comptroller of the Currency or the Corporation
6 takes effect, elect to apply for coverage under
7 the Federal Long Term Care Insurance Pro-
8 gram established by chapter 90 of title 5,
9 United States Code, under the underwriting re-
10 quirements applicable to a new active workforce
11 member (as defined in Part 875, title 5, Code
12 of Federal Regulations).

13 (D) EMPLOYEE'S CONTRIBUTION.—

14 (i) IN GENERAL.—Subject to clause
15 (ii), an individual enrolled in the Federal
16 Employees Health Benefits program under
17 this subparagraph shall pay any employee
18 contribution required by the plan.

19 (ii) COST DIFFERENTIAL.—The dif-
20 ference in costs between the benefits that
21 the Office of Thrift Supervision is pro-
22 viding on the date of enactment of this
23 title and the benefits provided by this sec-
24 tion shall be paid by the Comptroller of the
25 Currency or the Corporation.

1 (iii) FUNDS TRANSFER.—The Office
2 of the Comptroller of the Currency or the
3 Corporation shall transfer to the Federal
4 Employees Health Benefits Fund estab-
5 lished under section 8909 of title 5, United
6 States Code, an amount determined by the
7 Director of the Office of Personnel Man-
8 agement, after consultation with the Office
9 of the Comptroller of the Currency or the
10 Corporation and the Office of Management
11 and Budget, to be necessary to reimburse
12 the Fund for the cost to the Fund of pro-
13 viding benefits under this subparagraph
14 not otherwise paid for by the employee
15 under clause (i).

16 (E) SPECIAL PROVISIONS TO ENSURE CON-
17 TINUATION OF LIFE INSURANCE BENEFITS.—

18 (i) IN GENERAL.—An annuitant (as
19 defined in section 8901(3) of title 5,
20 United States Code) who is enrolled in a
21 life insurance plan administered by the Of-
22 fice of Thrift Supervision on the day before
23 the transfer date shall be eligible for cov-
24 erage by a life insurance plan under sec-
25 tions 8706(b), 8714a, 8714b, and 8714c of

1 title 5, United States Code, or in a life in-
2 surance plan established by the Office of
3 the Comptroller of the Currency or the
4 Corporation, without regard to any regu-
5 larly scheduled open season and require-
6 ment of insurability.

7 (ii) EMPLOYEE'S CONTRIBUTION.—

8 (I) IN GENERAL.—Subject to
9 subclause (II), an individual enrolled
10 in a life insurance plan under this
11 clause shall pay any employee con-
12 tribution required by the plan.

13 (II) COST DIFFERENTIAL.—The
14 difference in costs between the bene-
15 fits that the Office of Thrift Super-
16 vision is providing on the date of en-
17 actment of this title and the benefits
18 provided by this section shall be paid
19 by the Comptroller of the Currency or
20 the Corporation.

21 (III) FUNDS TRANSFER.—The
22 Office of the Comptroller of the Cur-
23 rency or the Corporation shall trans-
24 fer to the Employees' Life Insurance
25 Fund established under section 8714

1 of title 5, United States Code, an
2 amount determined by the Director of
3 the Office of Personnel Management,
4 after consultation with the Office of
5 the Comptroller of the Currency or
6 the Corporation and the Office of
7 Management and Budget, to be nec-
8 essary to reimburse the Fund for the
9 cost to the Fund of providing benefits
10 under this subparagraph not other-
11 wise paid for by the employee under
12 subclause (I).

13 (IV) CREDIT FOR TIME EN-
14 ROLLED IN OTHER PLANS.—For em-
15 ployees transferred under this section,
16 enrollment in a life insurance plan ad-
17 ministered by the Office of the Comp-
18 troller of the Currency, the Office of
19 Thrift Supervision, or the Corporation
20 immediately before enrollment in a life
21 insurance plan under chapter 87 of
22 title 5, United States Code, shall be
23 considered as enrollment in a life in-
24 surance plan under that chapter for

1 purposes of section 8706(b)(1)(A) of
2 title 5, United States Code.

3 (j) **EQUITABLE TREATMENT.**—In administering the
4 provisions of this section, the Office of the Comptroller
5 of the Currency and the Corporation—

6 (1) shall take no action that would unfairly dis-
7 advantage transferred employees relative to other
8 employees of the Office of the Comptroller of the
9 Currency or the Corporation based on their prior
10 employment by the Office of Thrift Supervision;

11 (2) may take such action as is appropriate in
12 individual cases so that employees transferred under
13 this section receive equitable treatment, with respect
14 to those employees' status, tenure, pay, benefits
15 (other than benefits under programs administered by
16 the Office of Personnel Management), and accrued
17 leave or vacation time, for prior periods of service
18 with any Federal agency;

19 (3) shall, jointly with the Director of the Office
20 of Thrift Supervision, develop and adopt procedures
21 and safeguards designed to ensure that the require-
22 ments of this subsection are met; and

23 (4) shall conduct a study detailing the position
24 assignments of all employees transferred pursuant to
25 subsection (a), describing the procedures and safe-

1 guards adopted pursuant to paragraph (3), and
2 demonstrating that the requirements of this sub-
3 section have been met; and shall, not later than 365
4 days after the transfer date, submit a copy of such
5 study to Congress.

6 **SEC. 1213. PROPERTY TRANSFERRED.**

7 (a) IN GENERAL.—Not later than 90 days after the
8 transfer date, all property of the Office of Thrift Super-
9 vision shall be transferred to the Office of the Comptroller
10 of the Currency or the Corporation, allocated in a manner
11 consistent with section 1212(a).

12 (b) CONTRACTS RELATED TO PROPERTY TRANS-
13 FERRED.—All contracts, agreements, leases, licenses, per-
14 mits, and similar arrangements relating to property trans-
15 ferred to the Office of the Comptroller of the Currency
16 or the Corporation by this section shall be transferred to
17 the Office of the Comptroller of the Currency or the Cor-
18 poration together with that property.

19 (c) PRESERVATION OF PROPERTY.—Property identi-
20 fied for transfer under this section shall not be altered,
21 destroyed, or deleted before transfer under this section.

22 (d) PROPERTY DEFINED.—For purposes of this sec-
23 tion, the term “property” includes all real property (in-
24 cluding leaseholds) and all personal property (including
25 computers, furniture, fixtures, equipment, books, ac-

1 counts, records, reports, files, memoranda, paper, reports
2 of examination, work papers and correspondence related
3 to such reports, and any other information or materials).

4 **SEC. 1214. FUNDS TRANSFERRED.**

5 Except to the extent needed to dispose of affairs
6 under section 1215, all funds that, on the day before the
7 transfer date, are available to the Director of the Office
8 of Thrift Supervision to pay the expenses of the Office
9 of Thrift Supervision shall be transferred to the Office of
10 the Comptroller of the Currency or the Corporation, allo-
11 cated in a manner consistent with section 1212(a), on the
12 transfer date.

13 **SEC. 1215. DISPOSITION OF AFFAIRS.**

14 (a) IN GENERAL.—During the 90-day period begin-
15 ning on the transfer date, the Director of the Office of
16 Thrift Supervision—

17 (1) shall, solely for the purpose of winding up
18 the affairs of the agency related to any function
19 transferred to the Office of the Comptroller of the
20 Currency or the Corporation by this subtitle—

21 (A) manage any employees of the Office of
22 Thrift Supervision and provide for the payment
23 of the compensation and benefits of any such
24 employees that accrue before the transfer date;
25 and

1 (B) manage any property of the Office of
2 Thrift Supervision until the property is trans-
3 ferred under section 1213; and

4 (2) may take any other action necessary to
5 wind up the affairs of the Office of Thrift Super-
6 vision relating to the transferred functions.

7 (b) AUTHORITY AND STATUS OF DIRECTOR.—

8 (1) IN GENERAL.—Notwithstanding the trans-
9 fers of functions under this subtitle, the Director of
10 the Office of Thrift Supervision shall, during the 90-
11 day period beginning on the transfer date, retain
12 and may exercise any authority vested in the Direc-
13 tor on the day before the transfer date that is nec-
14 essary to carry out the requirements of this subtitle
15 during that period.

16 (2) OTHER PROVISIONS.—For purposes of
17 paragraph (1), the Director of the Office of Thrift
18 Supervision shall, during the 90-day period begin-
19 ning on the transfer date, continue to be—

20 (A) treated as an officer of the United
21 States; and

22 (B) entitled to receive compensation at the
23 same annual rate of basic pay that he or she
24 was receiving on the day before the transfer
25 date.

1 **SEC. 1216. CONTINUATION OF SERVICES.**

2 Any agency, department, or other instrumentality of
3 the United States, and any successor to any such agency,
4 department, or instrumentality, that was, before the trans-
5 fer date, providing support services to the Office of Thrift
6 Supervision in connection with functions to be transferred
7 to the Office of the Comptroller of the Currency or the
8 Corporation, shall—

9 (1) continue to provide those services, subject to
10 reimbursement, until the transfer of those functions
11 is complete; and

12 (2) consult with any such agency to coordinate
13 and facilitate a prompt and orderly transition.

14 **SEC. 1217. CONTRACTING AND LEASING AUTHORITY.**

15 In addition to any powers transferred to the Comp-
16 troller of the Currency by this subtitle, the Comptroller
17 of the Currency may—

18 (1) enter into and perform contracts, execute
19 instruments, and acquire in any lawful manner such
20 goods and services, or real or personal property, or
21 interest in property, as the Comptroller of the Cur-
22 rency determines to be necessary or convenient to
23 carry out the duties and responsibilities of the
24 Comptroller of the Currency; and

25 (2) hold, maintain, sell, lease, or otherwise dis-
26 pose of any real or personal property or interest in

property without regard to title 40, United States Code, title III of the Federal Properties and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), and other Federal laws of a similar type governing the procurement of goods and services or the acquisition or disposition of any property or interest in property by Federal agencies.

SEC. 1218. TREATMENT OF SAVINGS AND LOAN HOLDING COMPANIES.

Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended as follows:

(1) In subsection (a)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (1)(D), by striking clause (i) and inserting: “(i) In general.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘savings and loan holding company’ means any company that directly or indirectly controls a savings association or that controls any company that is a savings and loan holding company, and that is either—

1 “(I) a fraternal beneficiary soci-
 2 ety, as defined in section 501(c)(8) of
 3 the Internal Revenue Code of 1986; or

4 “(II) a company that is, together
 5 with all of its affiliates on a consoli-
 6 dated basis, predominantly engaged in
 7 the business of insurance.”;

8 (C) in paragraph (1)(F), by striking “Di-
 9 rector” and inserting “Board”;

10 (D) in paragraph (1), by inserting at the
 11 end the following new subparagraph:

12 “(K) BOARD.—The term ‘Board’ means
 13 the Board of Governors of the Federal Reserve
 14 System.”.

15 (E) in paragraph (2)(D), by striking “Di-
 16 rector” and inserting “Board”;

17 (F) in paragraph (3)(A), by striking “Di-
 18 rector” and inserting “Board”; and

19 (G) in paragraph (4), by striking “Direc-
 20 tor” and inserting “Board”.

21 (2) In subsection (b), by striking “Director”
 22 each place it appears and inserting “Board”.

23 (3) In subsection (c)—

24 (A) in paragraph, (2)(F)(i)—

1 (i) by striking “of Governors of the
2 Federal Reserve System”; and

3 (ii) by striking “Director” and insert-
4 ing “Board”;

5 (B) in paragraph (2)(G), by striking “Di-
6 rector” and inserting “Board”;

7 (C) in paragraph (4)(A), by striking “Di-
8 rector” and inserting “Board”;

9 (D) in paragraph (4)(B)—

10 (i) in the heading, by striking “direc-
11 tor” and inserting “Board”; and

12 (ii) by striking “the Director shall”
13 and inserting “the Board shall”;

14 (E) in paragraph (4)(C)—

15 (i) in the heading, by striking “direc-
16 tor” and inserting “Board”; and

17 (ii) by striking “the Director may”
18 and inserting “the Board may”;

19 (F) in paragraph (5), by striking “Direc-
20 tor” and inserting “Board”;

21 (G) in paragraph (6)(D)—

22 (i) in the heading, by striking “direc-
23 tor” and inserting “Board”; and

24 (ii) by striking “Director” each place
25 it appears and inserting “Board”;

1 (H) in paragraph (9)(A)(ii), by inserting “,
2 but only if the conditions for engaging in ex-
3 panded financial activities set forth in section
4 4(l) of the Bank Holding Company Act of 1956
5 have been met” after “1956”; and

6 (I) in paragraph (9)(E), by striking “Di-
7 rector” each place it appears and inserting
8 “Board”.

9 (4) In subsection (e)—

10 (A) in paragraph (1)(A)—

11 (i) in clause (i), by striking “Direc-
12 tor” and inserting “Board”;

13 (ii) in clause (ii), by striking “Direc-
14 tor” and inserting “Board”;

15 (iii) in clause (iii), by striking “Direc-
16 tor” each place it appears and inserting
17 “Board”; and

18 (iv) in clause (iv), by striking “Direc-
19 tor” each place it appears and inserting
20 “Board”;

21 (B) in paragraph (1)(B), by striking “Di-
22 rector” each place it appears and inserting
23 “Board”;

1 (C) in paragraph (2), by striking “Direc-
2 tor” each place it appears and inserting
3 “Board”;

4 (D) in paragraph (3), by striking “Direc-
5 tor” and inserting “Board”;

6 (E) in paragraph (4)(A), by striking “Di-
7 rector” and inserting “Board”; and

8 (F) in paragraph (5), by striking “Direc-
9 tor” each place it appears and inserting
10 “Board”.

11 (5) In subsection (f), by striking “Director”
12 each place it appears and inserting “Board”.

13 (6) In subsection (g), by striking “Director”
14 each place it appears and inserting “Board”.

15 (7) In subsection (h)—

16 (A) in paragraph (2), by striking “Direc-
17 tor” and inserting “Board”; and

18 (B) in paragraph (3), by striking “Direc-
19 tor” and inserting “Board”.

20 (8) In subsection (i)—

21 (A) in paragraph (1)(A), by striking “Di-
22 rector” and inserting “Board”;

23 (B) in paragraph (2)(B), by striking “Di-
24 rector” and inserting “Board”;

1 (C) in paragraph (2)(F), by striking “Di-
2 rector” and inserting “Board”;

3 (D) in paragraph (3)(B), by striking “Di-
4 rector” and inserting “Board”;

5 (E) in paragraph (3)(F), by striking “Di-
6 rector” and inserting “Board”;

7 (F) in paragraph (4), by striking “Direc-
8 tor” and inserting “Board”; and

9 (G) in paragraph (5), by striking “Direc-
10 tor” and inserting “Board”.

11 (9) In subsection (j), by striking “Director”
12 each place it appears and inserting “Board”.

13 (10) In subsection (l)—

14 (A) in paragraph (1), by striking “Direc-
15 tor” and inserting “Board, in consultation with
16 the Comptroller of the Currency,”; and

17 (B) in paragraph (2), by striking “Direc-
18 tor” and inserting “Board, in consultation with
19 the Comptroller of the Currency,”.

20 (11) In subsection (m)—

21 (A) in paragraph (2), by striking “Direc-
22 tor” and inserting “Comptroller”;

23 (B) in paragraph (2), by striking “Director
24 may grant” and inserting “Comptroller of the
25 Currency may grant”;

1 (C) in paragraph (2), by striking “the Di-
2 rector deems” and inserting “the Comptroller
3 deems”;

4 (D) in paragraph (2)(A), by striking “Di-
5 rector” and inserting “Comptroller”;

6 (E) in paragraph (2)(B), by striking “Di-
7 rector” and inserting “Comptroller”;

8 (F) in paragraph (2)(B)(iii), by striking
9 “Director” and inserting “Comptroller”;

10 (G) by striking subparagraph (A) of para-
11 graph (3) and inserting the following new sub-
12 paragraph:

13 “(A) IN GENERAL.—A savings association
14 that fails to become or remain a qualified thrift
15 lender shall—

16 “(i) immediately be subject to the re-
17 strictions in subparagraph (B); and

18 “(ii) become one or more banks (other
19 than a savings bank) within one year after
20 the date on which the savings association
21 should have become or ceases to be a quali-
22 fied thrift lender, except as provided in
23 subparagraph (C)(i).”;

1 (H) by striking subclause (III) of para-
2 graph (3)(B)(i) and inserting the following new
3 subclause:

4 “(III) DIVIDENDS.—The savings
5 association shall be prohibited from
6 paying dividends except for such divi-
7 dends—

8 “(aa) as would be permis-
9 sible for a national bank;

10 “(bb) that are necessary to
11 meet obligations of a company
12 that controls such savings asso-
13 ciation; and

14 “(cc) that are specifically
15 approved by the Comptroller and
16 the Board of Governors after
17 prior written request of at least
18 30 days to the Comptroller and
19 the Board of Governors.”;

20 (I) by striking clause (ii) of paragraph
21 (3)(B);

22 (J) by striking subparagraphs (C) and (D)
23 of paragraph (3) and inserting the following
24 new subparagraphs:

1 “(C) REGULATORY AUTHORITY.—A sav-
2 ings association that fails to become or remain
3 a qualified thrift lender shall be deemed to have
4 violated section 5 of the Home Owners’ Loan
5 Act and subject to actions authorized by section
6 5(d) of the Home Owners’ Loan Act.

7 “(D) REQUALIFICATIONS.—

8 “(i) A savings association that should
9 have become or ceases to be a qualified
10 thrift lender shall not be subject to sub-
11 paragraph (A)(ii) if the savings association
12 becomes a qualified thrift lender by meet-
13 ing the qualified thrift lender requirement
14 in paragraph (1) on a monthly average
15 basis in 9 out of the preceding 12 months
16 and remains a qualified thrift lender.

17 “(ii) If the savings association re-
18 ferred to in clause (i) (or any savings asso-
19 ciation that acquired all or substantially all
20 of its assets from that savings association)
21 at any time thereafter ceases to be a quali-
22 fied thrift lender it shall immediately be
23 subject to subparagraph (A)(ii) as if the 1-
24 year time period provided for in subpara-
25 graph (A)(ii) already has expired, and as if

1 the exception in clause (i) was not applica-
2 ble or available to such savings associa-
3 tion.”;

4 (K) in paragraph (4)(D) by striking “Di-
5 rector” and inserting “Comptroller”;

6 (L) in paragraph (4)(E) by striking “Di-
7 rector” and inserting “Comptroller”; and

8 (M) in paragraph (7)(B) by striking “Di-
9 rector” and inserting “Comptroller”.

10 (12) In subsection (o)—

11 (A) in paragraph (3) in the heading by
12 striking “DIRECTOR” and inserting “BOARD”;

13 (B) in paragraph (3)(A) by striking “Di-
14 rector” and inserting “Board”;

15 (C) in paragraph (3)(B) by striking “Di-
16 rector” and inserting “Board”;

17 (D) in paragraph (3)(C) by striking “Di-
18 rector” and inserting “Board”;

19 (E) in paragraph (3)(D) by striking “Di-
20 rector” and inserting “Comptroller”;

21 (F) in paragraph (5)(E), by striking “ac-
22 tivities described in subsection (c)(2) or
23 (c)(9)(A)(ii)” and inserting “activities otherwise
24 permissible for the company pursuant to, and in

1 accordance with, section 4 of the Bank Holding
2 Company Act of 1956”;

3 (G) in paragraph (7) by striking “char-
4 tered by the Director” and inserting “chartered
5 by the Comptroller”; and

6 (H) in paragraph (7) by striking “regula-
7 tions as the Director may” and inserting “regu-
8 lations as the Board may”.

9 (13) In subsections (p), (q), (r), and (s), by
10 striking “Director” each place it appears and insert-
11 ing “Board”.

12 **SEC. 1219. PRACTICES OF CERTAIN MUTUAL THRIFT HOLD-**
13 **ING COMPANIES PRESERVED.**

14 (a) TREATMENT OF DIVIDENDS BY CERTAIN MU-
15 TUAL HOLDING COMPANIES.—Section 3(g) of the Bank
16 Holding Company Act of 1956 (12 U.S.C. 1842(g)) is
17 amended by adding at the end the following new para-
18 graphs:

19 “(3) DECLARATION OF DIVIDENDS.—Every
20 subsidiary savings association of a mutual holding
21 company shall give the Board not less than 30 days
22 advance notice of the proposed declaration by its di-
23 rectors of any dividend on its guaranty, permanent,
24 or other nonwithdrawable stock. Such notice period
25 shall commence to run from the date of receipt of

1 such notice by the Board. Any such dividend de-
2 clared within such period, or without the giving of
3 such notice to the Board, shall be invalid and shall
4 confer no rights or benefits upon the holder of any
5 such stock.

6 “(4) WAIVER OF DIVIDENDS.—Any mutual
7 thrift holding company organized under section
8 10(b) of the Home Owners’ Loan Act shall be per-
9 mitted to waive such company’s right to receive any
10 dividend declared by a subsidiary, if—

11 “(A) no insider of the mutual holding com-
12 pany, associate of an insider, or tax-qualified or
13 non-tax-qualified employee stock benefit plan of
14 the mutual holding company holds any share of
15 the stock in the class of stock to which the
16 waiver would apply; or

17 “(B) the mutual holding company provides
18 the Board with written notice of its intent to
19 waive its right to receive dividends 30 days
20 prior to the proposed date of payment of the
21 dividend and the Board does not object.

22 “(5) STANDARDS FOR WAIVER OF DIVIDEND.—
23 The Board shall not object to a notice of intent to
24 waive dividends under paragraph (4) if—

1 “(A) the waiver would not be detrimental
2 to the safe and sound operation of the savings
3 association; and

4 “(B) the board of directors of the mutual
5 holding company expressly determines that a
6 waiver of the dividend by the mutual holding
7 company is consistent with the directors’ fidu-
8 ciary duties to the mutual members of such
9 company.

10 “(6) RESOLUTION INCLUDED IN WAIVER NO-
11 TICE.—A dividend waiver notice shall include a copy
12 of the resolution of the board of directors of the mu-
13 tual holding company, in form and substance satis-
14 factory to the Board, together with any supporting
15 materials relied upon by the board of directors, con-
16 cluding that the proposed dividend waiver is con-
17 sistent with the board of director’s fiduciary duties
18 to the mutual members of the mutual holding com-
19 pany.

20 “(7) VALUATION.—

21 “(A) IN GENERAL.—The Board shall con-
22 sider waived dividends in determining an appro-
23 priate exchange ratio in the event of a full con-
24 version to stock form.

1 “(B) EXCEPTION.—In the case of a sav-
2 ings association which has reorganized into a
3 mutual thrift holding company under section
4 10(b) of the Home Owners’ Loan Act and has
5 issued minority stock either from its mid-tier
6 stock holding company or its subsidiary stock
7 savings association prior to December 1, 2009,
8 the Board shall not consider waived dividends
9 in determining an appropriate exchange ratio in
10 the event of a full conversion to stock form.”.

11 **SEC. 1220. IMPLEMENTATION PLAN AND REPORTS.**

12 (a) PLAN SUBMISSION.—Within 90 days of the enact-
13 ment of the Financial Stability Improvement Act of 2009,
14 the Secretary and the Corporation, in consultation with
15 the Office of the Comptroller of the Currency and the Of-
16 fice of Thrift Supervision, shall jointly submit a plan to
17 the Congress and the Inspectors General of the Depart-
18 ment of the Treasury and of the Corporation detailing the
19 steps the Secretary, the Corporation, the Office of the
20 Comptroller of the Currency, and the Office of Thrift Su-
21 pervision will take to implement the provisions of sections
22 1201 through 1216, and the provisions of the amendments
23 made by such sections.

24 (b) INSPECTORS GENERAL REVIEW OF THE PLAN.—
25 Within 60 days of the date on which the Congress receives

1 the plan required under subsection (a), the Inspectors
2 General of the Department of the Treasury and of the
3 Corporation shall jointly provide a written report to the
4 Secretary and the Corporation and shall submit a copy
5 to the Congress detailing whether the plan conforms with
6 the intent of the provisions of sections 1201 through 1216,
7 and the provisions of the amendments made by such sec-
8 tions, including—

9 (1) whether the plan sufficiently takes into con-
10 sideration the orderly transfer of personnel;

11 (2) whether the plan describes procedures and
12 safeguards to ensure that the Office of Thrift Super-
13 vision employees are not unfairly disadvantaged rel-
14 ative to employees of the Office of the Comptroller
15 of the Currency and the Corporation;

16 (3) whether the plan sufficiently takes into con-
17 sideration the orderly transfer of authority and re-
18 sponsibilities;

19 (4) whether the plan sufficiently takes into con-
20 sideration the effective transfer of funds;

21 (5) whether the plan sufficiently takes in con-
22 sideration the orderly transfer of property; and

23 (6) any additional recommendations for an or-
24 derly and effective process.

1 (c) IMPLEMENTATION REPORTS.—Not later than 6
2 months after the date on which the Congress receives the
3 report required under subsection (b), and every 6 months
4 thereafter until all aspects of the plan have been imple-
5 mented, the Inspectors General of the Department of the
6 Treasury and the Corporation shall jointly provide a writ-
7 ten report on the status of the implementation of the plan
8 to the Secretary and the Corporation and shall submit a
9 copy to the Congress.

10 **SEC. 1221. COMPOSITION OF BOARD OF DIRECTORS OF THE**
11 **FEDERAL DEPOSIT INSURANCE CORPORA-**
12 **TION.**

13 Section 2 of the Federal Deposit Insurance Act (12
14 U.S.C. 1812) is amended—

15 (1) in subsection (a)(1)—

16 (A) in subparagraph (B), by striking “Di-
17 rector of the Office of Thrift Supervision” and
18 inserting “Chairman of the Board of Governors
19 of the Federal Reserve System, or such other
20 member of the Board of Governors as the
21 Chairman of the Board of Governors shall des-
22 ignate”;

23 (2) by amending subsection (d)(2) to read as
24 follows:

1 “(2) ACTING OFFICIALS MAY SERVE.—In the
2 event of a vacancy in the office of the Comptroller
3 of the Currency and pending the appointment of a
4 successor, or during the absence or disability of the
5 Comptroller of the Currency, the acting Comptroller
6 of the Currency shall be a member of the Board of
7 Directors in the place of the Comptroller of the Cur-
8 rency.”; and

9 (3) in subsection (f)(2), by striking “or of the
10 Office of Thrift Supervision”.

11 **SEC. 1222. AMENDMENTS TO SECTION 3.**

12 Section 3 of the Federal Deposit Insurance Act (12
13 U.S.C. 1813) is amended—

14 (1) in subsection (b)(1)(C) (relating to the defi-
15 nition of the term “savings association”), by striking
16 “Director of the Office of Thrift Supervision” and
17 inserting “Comptroller of the Currency”;

18 (2) in subsection (l)(5) (relating to the defini-
19 tion of the term “deposit”), in the introductory text,
20 by striking “Director of the Office of Thrift Super-
21 vision,”; and

22 (3) in subsection (z) (relating to the definition
23 of the term “Federal banking agency”), by striking
24 “the Director of the Office of Thrift Supervision,”.

1 **SEC. 1223. AMENDMENTS TO SECTION 7.**

2 Section 7(a) of the Federal Deposit Insurance Act
3 (12 U.S.C. 1817) is amended—

4 (1) in paragraph (2)(A)—

5 (A) in the first sentence, by striking “the
6 Director of the Office of Thrift Supervision”;

7 (B) in the second sentence, by striking
8 “the Director of the Office of Thrift Super-
9 vision,”;

10 (2) in paragraph (3), in the first sentence, by
11 striking “, the Comptroller of the Currency, the
12 Chairman of the Board of Governors of the Federal
13 Reserve System, and the Director of the Office of
14 Thrift Supervision” and inserting “Comptroller of
15 the Currency and the Chairman of the Board of
16 Governors of the Federal Reserve System”; and

17 (3) in paragraph (7), by striking “, the Director
18 of the Office of Thrift Supervision,”.

19 **SEC. 1224. AMENDMENTS TO SECTION 8.**

20 Section 8 of the Federal Deposit Insurance Act (12
21 U.S.C. 1818) is amended—

22 (1) in subsection (a)(8)(B)(ii), in the last sen-
23 tence—

24 (A) by striking “Director of the Office of
25 Thrift Supervision” each place it appears and
26 inserting “Comptroller of the Currency”; and

1 (B) by inserting “the Office of Thrift Su-
2 pervision, as a successor to” after “as a suc-
3 cessor to”;

4 (2) in subsection (o), by striking “Director of
5 the Office of Thrift Supervision” and inserting
6 “Comptroller of the Currency”; and

7 (3) in subsection (w)(3)(A), by striking “Office
8 of Thrift Supervision” and inserting “Office of the
9 Comptroller of the Currency”.

10 **SEC. 1225. AMENDMENTS TO SECTION 11.**

11 Section 11 of the Federal Deposit Insurance Act (12
12 U.S.C. 1821) is amended—

13 (1) in subsection (c)(6)—

14 (A) in the heading, by striking “DIRECTOR
15 OF THE OFFICE OF THRIFT SUPERVISION” and
16 inserting “COMPTROLLER OF THE CURRENCY”;

17 (B) in subparagraph (A), by striking “Di-
18 rector of the Office of Thrift Supervision” and
19 inserting “Comptroller of the Currency”;

20 (C) in subparagraph (B), by striking “Di-
21 rector of the Office of Thrift Supervision” and
22 inserting “Comptroller of the Currency”;

23 (2) in subsection (d)—

24 (A) in paragraph (17)(A)—

1 (i) by striking “, or the Director of
2 the Office of Thrift Supervision”; and

3 (ii) by striking “appropriate”; and

4 (B) in paragraph (18)(B), by striking “or
5 the Director of the Office of Thrift Super-
6 vision”; and

7 (3) in subsection (n)—

8 (A) in paragraph (1)(A), by striking “the
9 Director of the Office of Thrift Supervision,
10 with respect to 1 or more insured”;

11 (B) in paragraph (2)(A), by striking “the
12 Director of the Office of Thrift Supervision”;

13 (C) in paragraph (4)(D), by striking “and
14 the Director of the Office of Thrift Supervision,
15 as appropriate,”;

16 (D) in paragraph (4)(G), by striking “and
17 the Director of the Office of Thrift Supervision,
18 as appropriate,”; and

19 (E) in paragraph (12)(B), by striking “or
20 the Director of the Office of Thrift Supervision,
21 as appropriate,”.

22 **SEC. 1226. AMENDMENTS TO SECTION 13.**

23 Section 13(k)(1)(A)(iv) of the Federal Deposit Insur-
24 ance Act (12 U.S.C. 1823(k)(1)(A)(iv)) is amended by

1 striking “Director of the Office of Thrift Supervision” and
 2 inserting “Comptroller of the Currency”.

3 **SEC. 1227. AMENDMENTS TO SECTION 18.**

4 Section 18 of the Federal Deposit Insurance Act (12
 5 U.S.C. 1828) is amended—

6 (1) in subsection (c)(2)—

7 (A) in subparagraph (A), by striking
 8 “bank;” and inserting “bank or a savings asso-
 9 ciation; and”;

10 (B) in subparagraph (B), by inserting
 11 “and” at the end after the semicolon;

12 (C) in subparagraph (C), by striking
 13 “bank (except a savings bank supervised by the
 14 Director of the Office of Thrift Supervision);
 15 and” and inserting “bank or State savings as-
 16 sociation.”; and

17 (D) by striking subparagraph (D);

18 (2) in subsection (i)(2)—

19 (A) by striking subparagraph (B) and in-
 20 serting the following new subparagraph:

21 “(B) the Corporation, if the resulting insti-
 22 tution is to be a State nonmember insured bank
 23 or insured State savings association.”; and

24 (B) by striking subparagraph (C); and

25 (3) in subsection (m)—

1 (A) in paragraph (1)—

2 (i) in subparagraph (A), by striking
3 “Director of the Office of Thrift Super-
4 vision” and inserting “Comptroller of the
5 Currency”; and

6 (ii) in subparagraph (B), by striking
7 “Director of the Office of Thrift Super-
8 vision” and inserting “Comptroller of the
9 Currency”;

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by striking
12 “Director of the Office of Thrift Super-
13 vision” and inserting “Comptroller of the
14 Currency”; and

15 (ii) in subparagraph (B)—

16 (I) by striking “Director of the
17 Office of Thrift Supervision” each
18 place it appears and inserting “Comp-
19 troller of the Currency”; and

20 (II) by striking “Director may
21 deem appropriate” and inserting
22 “Comptroller may deem appropriate”;
23 and

24 (C) in paragraph (3)—

- 1 (i) in subparagraph (A), by striking
2 “Director of the Office of Thrift Super-
3 vision” and inserting “Comptroller of the
4 Currency”; and
5 (ii) in subparagraph (B), by striking
6 “Office of Thrift Supervision” and insert-
7 ing “Comptroller of the Currency”.

8 **SEC. 1228. AMENDMENTS TO SECTION 28.**

9 Section 28 of the Federal Deposit Insurance Act (12
10 U.S.C. 1831e) is amended—

11 (1) in subsection (e)—

12 (A) in paragraph (2)—

13 (i) in subparagraph (A)(ii), by strik-
14 ing “Director of the Office of Thrift Su-
15 pervision” and inserting “Comptroller of
16 the Currency”;

17 (ii) in subparagraph (C), by striking
18 “Director of the Office of Thrift Super-
19 vision” and inserting “Comptroller of the
20 Currency”; and

21 (iii) in subparagraph (F), by striking
22 “Director of the Office of Thrift Super-
23 vision” and inserting “Comptroller of the
24 Currency”; and

25 (B) in paragraph (3)—

1 (i) in subparagraph (A), by striking
 2 “Director of the Office of Thrift Super-
 3 vision” and inserting “Comptroller of the
 4 Currency”; and

5 (ii) in subparagraph (B), by striking
 6 “Director of the Office of Thrift Super-
 7 vision” and inserting “Comptroller of the
 8 Currency”; and

9 (2) in subsection (h)(2), by striking “Director
 10 of the Office of Thrift Supervision” and inserting
 11 “Comptroller of the Currency”.

12 **SEC. 1229. AMENDMENTS TO THE ALTERNATIVE MORT-**
 13 **GAGE TRANSACTION PARITY ACT OF 1982.**

14 (a) AMENDMENTS TO SECTION 802.—Section
 15 802(a)(3) of the Alternative Mortgage Transaction Parity
 16 Act of 1982 (12 U.S.C. 3801(a)(3)) is amended—

17 (1) by striking “Comptroller of the Currency,”
 18 and inserting “Comptroller of the Currency and”;
 19 and

20 (2) by striking “, and the Director of the Office
 21 of Thrift Supervision”.

22 (b) AMENDMENTS TO SECTION 804.—Section 804(a)
 23 of the Alternative Mortgage Transaction Parity Act of
 24 1982 (12 U.S.C. 3803(a)) is amended—

1 (1) by amending paragraph (1) to read as fol-
2 lows:

3 “(1) with respect to banks, savings associations,
4 mutual savings banks, and savings banks, only to
5 transactions made in accordance with regulations
6 governing alternative mortgage transactions as pre-
7 scribed by the Comptroller of the Currency to the
8 extent that such regulations are authorized by rule-
9 making authority granted to the Comptroller of the
10 Currency under laws other than this section; and”;

11 (2) in paragraph (2), by striking “; and” and
12 inserting a period; and

13 (3) by striking paragraph (3).

14 **SEC. 1230. AMENDMENTS TO THE BANK HOLDING COM-**
15 **PANY ACT OF 1956.**

16 Section 4(f)(12)(A) of the Bank Holding Company
17 Act of 1956 (12 U.S.C. 1843(f)(12)(A)) is amended strik-
18 ing “the Resolution Trust Corporation, the Federal De-
19 posit Insurance Corporation, or” and inserting “the Fed-
20 eral Deposit Insurance Corporation or”.

21 **SEC. 1231. AMENDMENTS TO THE BANK PROTECTION ACT**
22 **OF 1968.**

23 Section 2 of the Bank Protection Act of 1968 (12
24 U.S.C. 1881) is amended—

1 (1) in paragraph (1), by striking “national
2 banks,” and inserting “national banks and federal
3 savings associations,”;

4 (2) in paragraph (2), by inserting “and” at the
5 end;

6 (3) in paragraph (3), by striking “, and” and
7 inserting a period; and

8 (4) by striking paragraph (4).

9 **SEC. 1232. AMENDMENTS TO THE BANK SERVICE COMPANY**

10 **ACT.**

11 Section 1(b) of the Bank Service Company Act (12
12 U.S.C. 1861(b)) is amended—

13 (1) in paragraph (4), by striking “insured
14 bank,” and inserting “insured bank or”;

15 (2) by striking “Director of the Office of Thrift
16 Supervision” and inserting “Comptroller of the Cur-
17 rency”; and

18 (3) by striking “, the Federal Savings and Loan
19 Insurance Corporation,”.

20 **SEC. 1233. AMENDMENTS TO THE COMMUNITY REINVEST-**

21 **MENT ACT OF 1977.**

22 Section 803 of the Community Reinvestment Act of
23 1977 (12 U.S.C. 2902) is amended—

24 (1) in paragraph (1)—

(A) in subparagraph (A), by striking “national banks” and inserting “national banks or savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)”; and

(B) in subparagraph (B), by striking “and bank holding companies;” and inserting “, bank holding companies and savings and loan holding companies;”; and

(2) by striking the first paragraph (2) (relating to section 8 of the Federal Deposit Insurance Act).

SEC. 1234. AMENDMENTS TO THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

(a) AMENDMENT TO SECTION 207.—Section 207 of the Depository Institution Management Interlocks Act (12 U.S.C. 3206) is amended—

(1) in paragraph (1), by striking “national banks,” and inserting “national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),”; and

(2) in paragraph (2), by striking “and bank holding companies,” and inserting “, bank holding companies, and savings and loan holding companies,”;

1 (3) by striking paragraph (4); and

2 (4) by redesignating paragraphs (5) and (6) as
3 paragraphs (4) and (5), respectively.

4 (b) AMENDMENT TO SECTION 209.—Section 209 of
5 the Depository Institution Management Interlocks Act (12
6 U.S.C. 3207) is amended—

7 (1) in paragraph (1), by striking “national
8 banks,” and inserting “national banks and Federal
9 savings associations (the deposits of which are in-
10 sured by the Federal Deposit Insurance Corpora-
11 tion),”;

12 (2) in paragraph (2), by striking “and bank
13 holding companies,” and inserting “, bank holding
14 companies, and savings and loan holding compa-
15 nies,”;

16 (3) at the end of paragraph (3), by inserting
17 “and” after the comma;

18 (4) by striking paragraph (4); and

19 (5) by redesignating paragraph (5) as para-
20 graph (4).

21 (c) AMENDMENT TO SECTION 210.—Subsection
22 210(a) of the Depository Institution Management Inter-
23 locks Act (12 U.S.C. 3208(a)) is amended—

24 (1) by striking “his” and inserting “the”; and

1 (2) by inserting “of the Attorney General” after
2 “enforcement functions”.

3 **SEC. 1235. AMENDMENTS TO THE EMERGENCY HOME-**
4 **OWNERS’ RELIEF ACT.**

5 Section 110 of the Emergency Homeowners’ Relief
6 Act (12 U.S.C. 2709) is amended—

7 (1) by striking the “Federal Home Loan Bank
8 Board” and inserting “Federal Housing Finance
9 Agency”; and

10 (2) by striking “the Federal Savings and Loan
11 Insurance Corporation,”.

12 **SEC. 1236. AMENDMENTS TO THE EQUAL CREDIT OPPOR-**
13 **TUNITY ACT.**

14 Section 704(a) of the Equal Credit Opportunity Act
15 (15 U.S.C. 1691c(a)) is amended—

16 (1) in paragraph (1)(A), by striking “and Fed-
17 eral branches and Federal agencies of foreign
18 banks,” and inserting “Federal branches and Fed-
19 eral agencies of foreign banks, or a savings associa-
20 tion the deposits of which are insured by the Federal
21 Deposit Insurance Corporation,”;

22 (2) by striking paragraph (2); and

23 (3) by redesignating paragraphs (3) through
24 (9) as paragraphs (2) through (8).

1 **SEC. 1237. AMENDMENTS TO THE FEDERAL CREDIT UNION**
2 **ACT.**

3 (a) AMENDMENTS TO SECTION 206.—Section
4 206(g)(7) of the Federal Credit Union Act (12 U.S.C.
5 1786(g)(7)) is amended—

6 (1) in subparagraph (A)—

7 (A) in clause (v), by inserting “and” after
8 the semicolon;

9 (B) in clause (vi)—

10 (i) by striking “Federal Housing Fi-
11 nance Board” and inserting “Federal
12 Housing Finance Agency”; and

13 (ii) by striking “; and” and inserting
14 a period; and

15 (C) by striking clause (vii); and

16 (2) in subparagraph (D)—

17 (A) in clause (iii), by inserting “and” after
18 the semicolon;

19 (B) in clause (iv), by striking “; and” and
20 inserting a period; and

21 (C) by striking clause (v).

22 **SEC. 1238. AMENDMENTS TO THE FEDERAL FINANCIAL IN-**
23 **STITUTIONS EXAMINATION COUNCIL ACT OF**
24 **1978.**

25 (a) AMENDMENT TO SECTION 1002.—Section 1002
26 of the Federal Financial Institutions Examination Council

1 Act of 1978 (12 U.S.C. 3301) is amended by striking
2 “Federal Home Loan Bank Board” and inserting “Fed-
3 eral Housing Finance Agency”.

4 (b) AMENDMENT TO SECTION 1003.—Section
5 1003(1) of the Federal Financial Institutions Examina-
6 tion Council Act of 1978 (12 U.S.C. 3302(1)) is amended
7 by striking “the Office of Thrift Supervision,”.

8 (c) AMENDMENTS TO SECTION 1004.—Section
9 1004(a) of the Federal Financial Institutions Examina-
10 tion Council Act of 1978 (12 U.S.C. 3303(a)) is amend-
11 ed—

12 (1) by striking paragraph (4); and

13 (2) by redesignating paragraphs (5) and (6) as
14 paragraphs (4) and (5), respectively.

15 **SEC. 1239. AMENDMENTS TO THE FEDERAL HOME LOAN**
16 **BANK ACT.**

17 (a) AMENDMENTS TO SECTION 18.—Section 18(c) of
18 the Federal Home Loan Bank Act (12 U.S.C. 1438(c))
19 is amended—

20 (1) by striking “Director of the Office of Thrift
21 Supervision” each place it appears and inserting
22 “Comptroller of the Currency”;

23 (2) in paragraph (1)(B), by striking “and the
24 agencies under its administration or supervision”;
25 and

1 (3) in paragraph (5), by striking “and such
2 agencies”.

3 (b) REPEAL OF SECTION 21A.—Section 21A of the
4 Federal Home Loan Bank Act (12 U.S.C. 1441a) is here-
5 by repealed.

6 **SEC. 1240. AMENDMENTS TO THE FEDERAL RESERVE ACT.**

7 Section 19(b) of the Federal Reserve Act (12 U.S.C.
8 461) is amended—

9 (1) in paragraph (1)(F), by striking “the Direc-
10 tor of the Office of Thrift Supervision” and insert-
11 ing “the Comptroller of the Currency”; and

12 (2) in paragraph (4)(B), by striking “the Direc-
13 tor of the Office of Thrift Supervision” and insert-
14 ing “the Comptroller of the Currency”.

15 **SEC. 1241. AMENDMENTS TO THE FINANCIAL INSTITUTIONS**
16 **REFORM, RECOVERY, AND ENFORCEMENT**
17 **ACT OF 1989.**

18 (a) AMENDMENTS TO SECTION 302.—Section 302(1)
19 of the Financial Institutions Reform, Recovery, and En-
20 forcement Act of 1989 is amended by striking “Director
21 of the Office of Thrift Supervision” and inserting “Comp-
22 troller of the Currency”.

23 (b) AMENDMENT TO SECTION 305.—Section
24 305(b)(1) of the Financial Institutions Reform, Recovery,
25 and Enforcement Act of 1989 is amended by striking “Di-

1 rector of the Office of Thrift Supervision” and inserting
2 “Comptroller of the Currency”.

3 (c) AMENDMENT TO SECTION 308.—Section 308(a)
4 of the Financial Institutions Reform, Recovery, and En-
5 forcement Act of 1989 (12 U.S.C. 1463 note) is amended
6 by striking “Director of the Office of Supervision” and
7 inserting “Comptroller of the Currency”.

8 (d) AMENDMENTS TO SECTION 402.—Section 402 of
9 the Financial Institutions Reform, Recovery, and Enforce-
10 ment Act of 1989 (12 U.S.C. 1437 note) is amended—

11 (1) in subsection (a), by striking “Director of
12 the Office of Thrift Supervision” and inserting
13 “Comptroller of the Currency”;

14 (2) in subsection (b), by striking “Director of
15 the Office of Thrift Supervision” and inserting
16 “Comptroller of the Currency”; and

17 (3) in subsection (e)—

18 (A) in paragraph (1), by striking “Office
19 of Thrift Supervision” and inserting “Office of
20 the Comptroller of the Currency”;

21 (B) in paragraph (2), by striking “Director
22 of the Office of Thrift Supervision” each place
23 it appears and inserting “Comptroller of the
24 Currency”;

1 (C) in paragraph (3), by striking “Director
2 of the Office of Thrift Supervision” and insert-
3 ing “Comptroller of the Currency”; and

4 (D) in paragraph (4), by striking “Direc-
5 tor of the Office of Thrift Supervision” and in-
6 serting “Comptroller of the Currency”.

7 (e) AMENDMENT TO SECTION 1103.—Section
8 1103(a)(2) of the Financial Institutions Reform, Recov-
9 ery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)(2))
10 is amended by striking “and the Resolution Trust Cor-
11 poration”.

12 (f) AMENDMENTS TO SECTION 1205.—Subsection
13 1205(b) of the Financial Institutions Reform, Recovery,
14 and Enforcement Act of 1989 (12 U.S.C. 1818 note) is
15 amended—

16 (1) in paragraph (1)—

17 (A) in subparagraph (B), by striking “Di-
18 rector of the Office of Thrift Supervision, or the
19 Director’s designee” and inserting “Comptroller
20 of the Currency, or the Comptroller’s designee”;

21 (B) by striking subparagraph (D); and

22 (C) by redesignating subparagraphs (E)
23 and (F) as subparagraphs (D) and (E), respec-
24 tively;

1 (2) in paragraph (2), by striking “paragraph
2 (1)(F)” and inserting “paragraph (1)(E)”;

3 (3) in paragraph (3), by striking “paragraph
4 (1)(F)” and inserting “paragraph (1)(E)”;

5 (4) in paragraph (5), by striking “through (E)”
6 and inserting “through (D)”.

7 (g) AMENDMENTS TO SECTION 1206.—Section
8 1206(a) of the Financial Institutions Reform, Recovery,
9 and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is
10 amended—

11 (1) by striking “the Oversight Board of the
12 Resolution Trust Corporation” and inserting “and”;
13 and

14 (2) by striking “, and the Office of Thrift Su-
15 pervision,”.

16 (h) AMENDMENTS TO SECTION 1216.—Section 1216
17 of the Financial Institutions Reform, Recovery, and En-
18 forcement Act of 1989 (12 U.S.C. 1833e) is amended—

19 (1) in subsection (a)—

20 (A) by striking paragraphs (2), (5), and
21 (6);

22 (B) by redesignating paragraphs (3) and
23 (4) as paragraphs (2) and (3), respectively; and

24 (C) in paragraph (2) (as redesignated), by
25 adding “and” at the end;

1 (2) in subsection (c)—

2 (A) by striking “the Director of the Office
3 of Thrift Supervision,” and inserting “and”;
4 and

5 (B) by striking “, the Oversight Board of
6 the Resolution Trust Corporation, and the Res-
7 olution Trust Corporation”; and

8 (3) in subsection (d)—

9 (A) by striking paragraphs (3), (5), and
10 (6); and

11 (B) by redesignating paragraphs (4), (7),
12 and (8) as paragraphs (3), (4), and (5), respec-
13 tively.

14 **SEC. 1242. AMENDMENTS TO THE HOUSING ACT OF 1948.**

15 Section 502(c) of the Housing Act of 1948 (12
16 U.S.C. 1701c(c)) is amended in the introductory text by
17 striking “Director of the Office of Thrift Supervision” and
18 inserting “Comptroller of the Currency”.

19 **SEC. 1243. AMENDMENTS TO THE HOUSING AND COMMU-**
20 **NITY DEVELOPMENT ACT OF 1992 AND THE**
21 **FEDERAL HOUSING ENTERPRISES FINANCIAL**
22 **SAFETY AND SOUNDNESS ACT OF 1992.**

23 (a) AMENDMENTS TO SECTION 543 OF THE HOUSING
24 AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section

1 543 of the Housing and Community Development Act of
2 1992 (12 U.S.C. 1707 note) is amended—

3 (1) in subsection (c)(1)—

4 (A) by striking subparagraphs (D) through
5 (F); and

6 (B) by redesignating subparagraphs (G)
7 and (H) as subparagraphs (D) and (E), respec-
8 tively; and

9 (2) in subsection (f)—

10 (A) in paragraph (2)—

11 (i) by striking “the Office of Thrift
12 Supervision,”; and

13 (ii) in subparagraph (D), by striking
14 “the Office of Thrift Supervision,”; and

15 (B) in paragraph (3)—

16 (i) by striking “the Office of Thrift
17 Supervision,”; and

18 (ii) in subparagraph (D), by striking
19 “Office of Thrift Supervision,” and insert-
20 ing “Comptroller of the Currency,”.

21 (b) AMENDMENT TO SECTION 1315 OF THE FED-
22 ERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND
23 SOUNDNESS ACT OF 1992.—Section 1315(b) of the Fed-
24 eral Housing Enterprises Financial Safety and Soundness
25 Act of 1992 (12 U.S.C. 4515(b)) is amended by striking

1 “the Federal Deposit Insurance Corporation, and the Of-
 2 fice of Thrift Supervision.” and inserting “and the Fed-
 3 eral Deposit Insurance Corporation.”.

4 (c) AMENDMENT TO SECTION 1317 OF THE FED-
 5 ERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND
 6 SOUNDNESS ACT OF 1992.—Section 1317(c) of the of the
 7 Federal Housing Enterprises Financial Safety and Sound-
 8 ness Act of 1992 (12 U.S.C. 4517(c)) is amended by strik-
 9 ing “the Federal Deposit Insurance Corporation, or the
 10 Director of the Office of Thrift Supervision” and inserting
 11 “or the Federal Deposit Insurance Corporation”.

12 **SEC. 1244. AMENDMENT TO THE HOUSING AND URBAN-**
 13 **RURAL RECOVERY ACT OF 1983.**

14 Section 469 of the Housing and Urban-Rural Recov-
 15 ery Act of 1983 (12 U.S.C. 1701p–1) is amended in the
 16 first sentence by striking “Federal Home Loan Bank
 17 Board” and inserting “Federal Housing Finance Agency”.

18 **SEC. 1245. AMENDMENTS TO THE NATIONAL HOUSING ACT.**

19 Section 202(f) of the National Housing Act is amend-
 20 ed—

21 (1) by amending paragraph (5) to read as fol-
 22 lows:

23 “(5) if the mortgagee is a national bank, a sub-
 24 sidiary or affiliate of such a bank, a Federal savings

1 association or a subsidiary or affiliate of a savings
 2 association, the Comptroller of the Currency;”;

3 (2) in paragraph (6), by adding “and” at the
 4 end;

5 (3) in paragraph (7)—

6 (A) by inserting “or State savings associa-
 7 tion” after “State bank”; and

8 (B) by striking “; and” and inserting a pe-
 9 riod; and

10 (4) by striking paragraph (8).

11 **SEC. 1246. AMENDMENTS TO THE RIGHT TO FINANCIAL**
 12 **PRIVACY ACT OF 1978.**

13 Section 1101(7) of the Right to Financial Privacy
 14 Act of 1978 (12 U.S.C. 3401(7)) is amended by striking
 15 subparagraph (B).

16 **SEC. 1247. AMENDMENTS TO THE BALANCED BUDGET AND**
 17 **EMERGENCY DEFICIT CONTROL ACT OF 1985.**

18 (a) AMENDMENTS TO SECTION 255.—Section
 19 255(g)(1)(A) of the Balanced Budget and Emergency
 20 Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is
 21 amended by striking “Office of Thrift Supervision (20–
 22 4108–0–3–373);”.

23 (b) AMENDMENTS TO SECTION 256.—Section
 24 256(h)(4) of the Balanced Budget and Emergency Deficit
 25 Control Act of 1985 (2 U.S.C. 906(h)(4)) is amended—

- 1 (1) by striking subparagraphs (C) and (G); and
2 (2) by redesignating subparagraphs (D), (E),
3 (F), and (H) as subparagraphs (C) through (G), re-
4 spectively.

5 **SEC. 1248. AMENDMENTS TO THE CRIME CONTROL ACT OF**
6 **1990.**

7 (a) AMENDMENTS TO SECTION 2539.—Section
8 2539(c)(2) of the Crime Control Act of 1990 (Public Law
9 101–647) is amended by striking subparagraph (F) and
10 redesignating subparagraphs (G) and (H) as subpara-
11 graphs (F) through (G), respectively.

12 (b) AMENDMENT TO SECTION 2554.—Section
13 2554(b)(2) of the Crime Control Act of 1990 (Public Law
14 101–647) is amended by striking “Director of the Office
15 of Thrift Supervision” and inserting “Comptroller of the
16 Currency”.

17 **SEC. 1249. AMENDMENT TO THE FLOOD DISASTER PROTEC-**
18 **TION ACT OF 1973.**

19 Section 3(a)(5) of the Flood Disaster Protection Act
20 of 1973 (42 U.S.C. 4003(a)(5)) is amended by striking
21 “the Office of Thrift Supervision,”.

22 **SEC. 1250. AMENDMENT TO THE INVESTMENT COMPANY**
23 **ACT OF 1940.**

24 Section 6(a)(3) of the Investment Company Act of
25 1940 (15 U.S.C. 80a–6(a)(3)) is amended by striking

1 “Federal Savings and Loan Insurance Corporation” and
2 inserting “Comptroller of the Currency”.

3 **SEC. 1251. AMENDMENT TO THE NEIGHBORHOOD REIN-**
4 **VESTMENT CORPORATION ACT.**

5 Section 606(c)(3) of the Neighborhood Reinvestment
6 Corporation Act is amended by striking “Federal Home
7 Loan Bank Board” and inserting “Federal Housing Fi-
8 nance Agency”.

9 **SEC. 1252. AMENDMENTS TO THE SECURITIES EXCHANGE**
10 **ACT OF 1934.**

11 (a) AMENDMENTS TO SECTION 3.—Section 3(a)(34)
12 of the Securities Exchange Act of 1934 (15 U.S.C.
13 78c(a)(34)) is amended—

14 (1) in subparagraph (A)—

15 (A) in clause (i), by striking “bank;” and
16 inserting “bank, or a savings association (as de-
17 fined in section 3(b) of the Federal Deposit In-
18 surance Act (12 U.S.C. 1813(b))), the deposits
19 of which are insured by the Federal Deposit In-
20 surance Corporation, a subsidiary or a depart-
21 ment or division of any such savings associa-
22 tion, or a savings and loan holding;”;

23 (B) in clause (iii), by adding “and” at the
24 end;

25 (C) by striking clause (iv); and

1 (D) by redesignating clause (v) as clause
2 (iv);
3 (2) in subparagraph (B)—

4 (A) in clause (i), by striking “bank;” and
5 inserting “bank, or a savings association (as de-
6 fined in section 3(b) of the Federal Deposit In-
7 surance Act (12 U.S.C. 1813 (b))), the deposits
8 of which are insured by the Federal Deposit In-
9 surance Corporation, a subsidiary or a depart-
10 ment or division of any such savings associa-
11 tion, or a savings and loan holding;”;

12 (B) in clause (iii), by adding “and” at the
13 end;

14 (C) by striking clause (iv); and

15 (D) by redesignating clause (v) as clause
16 (iv);
17 (3) in subparagraph (C)—

18 (A) in clause (i), by striking “bank;” and
19 inserting “bank, or a savings association (as de-
20 fined in section 3(b) of the Federal Deposit In-
21 surance Act (12 U.S.C. 1813 (b))), the deposits
22 of which are insured by the Federal Deposit In-
23 surance Corporation, a subsidiary or a depart-
24 ment or division of any such savings associa-
25 tion, or a savings and loan holding;”;

1 (B) in clause (iii), by adding “and” at the
2 end;

3 (C) by striking clause (iv); and

4 (D) by redesignating clause (v) as clause
5 (iv); and

6 (4) in subparagraph (F)—

7 (A) in clause (i), by striking “bank;” and
8 inserting “or a savings association (as defined
9 in section 3(b) of the Federal Deposit Insur-
10 ance Act (12 U.S.C. 1813 (b))), the deposits of
11 which are insured by the Federal Deposit In-
12 surance Corporation;”;

13 (B) by striking clause (ii); and

14 (C) redesignating clauses (iii), (iv), and (v)
15 as clauses (ii), (iii) and (iv), respectively.

16 (b) AMENDMENTS TO SECTION 15C.—Section 15C of
17 the Securities Exchange Act of 1934 (15 U.S.C. 78o–5)
18 is amended in subsection (g)(1) by striking “the Director
19 of the Office of Thrift Supervision, the Federal Savings
20 and Loan Insurance Corporation,”.

21 **SEC. 1253. AMENDMENTS TO TITLE 18, UNITED STATES**
22 **CODE.**

23 (a) AMENDMENT TO SECTION 212.—Section
24 212(c)(2) of title 18, United States Code, is amended—

25 (1) by striking subparagraph (C); and

1 (2) by redesignating subparagraphs (D)
2 through (H) as subparagraphs (C) through (G), re-
3 spectively.

4 (b) AMENDMENT TO SECTION 657.—Section 657 of
5 title 18, United States Code, is amended by striking “Of-
6 fice of Thrift Supervision, the Resolution Trust Corpora-
7 tion,”.

8 (c) AMENDMENT TO SECTION 981.—Section
9 981(a)(1)(D) of title 18, United States Code, is amend-
10 ed—

11 (1) by striking “the Resolution Trust Corpora-
12 tion,”; and

13 (2) by striking “or the Office of Thrift Super-
14 vision”.

15 (d) AMENDMENT TO SECTION 982.—Section
16 982(a)(3) of title 18, United States Code, is amended—

17 (1) by striking “the Resolution Trust Corpora-
18 tion,”; and

19 (2) by striking “or the Office of Thrift Super-
20 vision”.

21 (e) AMENDMENT TO SECTION 1006.—Section 1006
22 of title 18, United States Code, is amended—

23 (1) by striking “Office of Thrift Supervision,”;
24 and

1 (2) by striking “the Resolution Trust Corpora-
2 tion,”.

3 (f) AMENDMENT TO SECTION 1014.—Section 1014
4 of title 18, United States Code, is amended—

5 (1) by striking “the Office of Thrift Super-
6 vision,”; and

7 (2) by striking “the Resolution Trust Corpora-
8 tion,”.

9 (g) AMENDMENT TO SECTION 1032.—Section
10 1032(1) of title 18, United States Code, is amended—

11 (1) by striking “the Resolution Trust Corpora-
12 tion,”; and

13 (2) by striking “or the Director of the Office of
14 Thrift Supervision”.

15 **SEC. 1254. AMENDMENTS TO TITLE 31, UNITED STATES**
16 **CODE.**

17 (a) AMENDMENT TO SECTION 309.—Section 309 of
18 title 31, United States Code, is amended to read as fol-
19 lows:

20 **“§ 309. Division of Thrift Supervision**

21 “The Division of Thrift Supervision established
22 under section 3(a) of the Home Owners’ Loan Act shall
23 be a division in the Office of the Comptroller of the Cur-
24 rency.”.

1 (b) AMENDMENTS TO SECTION 321.—Section 321 of
2 title 31, United States Code, is amended—

3 (1) in subsection (c)—

4 (A) in paragraph (1), by adding “and” at
5 the end;

6 (B) in paragraph (2), by striking “; and”
7 and inserting a period; and

8 (C) by striking paragraph (3); and
9 (2) by striking subsection (e).

10 (c) AMENDMENTS TO SECTION 714.—Section 714 of
11 title 31, United States Code, is amended—

12 (1) in subsection (a), by striking “the Office of
13 the Comptroller of the Currency, and the Office of
14 Thrift Supervision.” and inserting “and the Office of
15 the Comptroller of the Currency.”;

16 (2) in subsection (b), by striking all after “has
17 consented in writing.” and inserting the following:
18 “Audits of the Federal Reserve Board and Federal
19 reserve banks shall not include unreleased tran-
20 scripts or minutes of meetings of the Board of Gov-
21 ernors or of the Federal Open Market Committee.
22 To the extent that an audit deals with individual
23 market actions, records related to such actions shall
24 only be released by the Comptroller General after

1 180 days have elapsed following the effective date of
2 such actions.”;

3 (3) in subsection (c)(1), in the first sentence, by
4 striking “subsection,” and inserting “subsection or
5 in the audits or audit reports referring or relating
6 to the Federal Reserve Board or Reserve Banks,”;
7 and

8 (4) by adding at the end the following:

9 “(f) AUDIT AND REPORT OF THE FEDERAL RESERVE
10 SYSTEM.—

11 “(1) IN GENERAL.—An audit of the Board of
12 Governors of the Federal Reserve System and the
13 Federal reserve banks under subsection (b) shall be
14 completed within 12 months of the enactment of the
15 Financial Stability Improvement Act of 2009.

16 “(2) REPORT.—

17 “(A) REQUIRED.—A report on the audit
18 referred to in paragraph (1) shall be submitted
19 by the Comptroller General to the Congress be-
20 fore the end of the 90-day period beginning on
21 the date on which such audit is completed and
22 made available to—

23 “(i) the Speaker of the House of Rep-
24 resentatives;

1 “(ii) the majority and minority leaders
2 of the House of Representatives;

3 “(iii) the majority and minority lead-
4 ers of the Senate;

5 “(iv) the Chairman and Ranking
6 Member of the committee and each sub-
7 committee of jurisdiction in the House of
8 Representatives and the Senate; and

9 “(v) any other Member of Congress
10 who requests it.

11 “(B) CONTENTS.—The report under sub-
12 paragraph (A) shall include a detailed descrip-
13 tion of the findings and conclusion of the
14 Comptroller General with respect to the audit
15 that is the subject of the report.

16 “(3) CONSTRUCTION.—Nothing in this sub-
17 section shall be construed—

18 “(A) as interference in or dictation of mon-
19 etary policy to the Federal Reserve System by
20 the Congress or the Government Accountability
21 Office; or

22 “(B) to limit the ability of the Government
23 Accountability Office to perform additional au-
24 dits of the Board of Governors of the Federal

1 Reserve System or of the Federal reserve
2 banks.”.

3 **SEC. 1255. REQUIREMENT FOR COUNTERCYCLICAL CAP-**
4 **ITAL REQUIREMENTS.**

5 Section 908(a) of the International Lending Super-
6 vision Act of 1983 (12 U.S.C. 3907(a)) is amended by
7 adding at the end the following new paragraph:

8 “(3) Each appropriate Federal banking agency
9 shall, in establishing capital requirements under this
10 Act or other provisions of Federal law for banking
11 institutions, seek to make such requirements coun-
12 tercyclical so that the amount of capital required to
13 be maintained by a banking institution increases in
14 times of economic expansion and decreases in times
15 of economic contraction, consistent with the safety
16 and soundness of the institution.”.

17 **SEC. 1256. TRANSFER OF AUTHORITY TO THE BOARD WITH**
18 **RESPECT TO SAVINGS AND LOAN HOLDING**
19 **COMPANIES.**

20 (a) TRANSFER OF FUNCTIONS.—Notwithstanding
21 any other provision of this subtitle, all functions of the
22 Director of the Office of Thrift Supervision with respect
23 to savings and loan holding companies that are a fraternal
24 beneficiary society, as defined in section 501(c)(8) of the
25 Internal Revenue Code of 1986, or a company that is, to-

1 gether with all of its affiliates on a consolidated basis, pre-
2 dominantly engaged in the business of insurance are
3 transferred to the Board.

4 (b) BOARD'S AUTHORITY.—Notwithstanding any
5 other provision of this subtitle, the Board shall succeed
6 to all powers, authorities, rights, and duties with respect
7 to savings and loan holding companies that are a fraternal
8 beneficiary society, as defined in section 501(c)(8) of the
9 Internal Revenue Code of 1986, or a company that is, to-
10 gether with all of its affiliates on a consolidated basis, pre-
11 dominantly engaged in the business of insurance that were
12 vested in the Director of the Office of Thrift Supervision
13 under Federal law, including the Home Owners' Loan Act,
14 on the day before the transfer date.

15 (c) SAVINGS AND LOAN HOLDING COMPANY DE-
16 FINED.—The term “savings and loan holding company”
17 shall have the meaning given such term under section 10
18 of the Home Owners' Loan Act.

19 **SEC. 1257. EFFECTIVE DATE.**

20 Except as otherwise provided in this subtitle, the
21 amendments made by sections 1221 through section 1253
22 and 1256 and subsections (a), (b), and (c)(1) of section
23 1254 shall take effect on the transfer date.

1 **Subtitle D—Further Improvements**
2 **to the Regulation of Bank Hold-**
3 **ing Companies and Depository**
4 **Institutions**

5 **SEC. 1301. TREATMENT OF INDUSTRIAL LOAN COMPANIES,**
6 **SAVINGS ASSOCIATIONS, AND CERTAIN**
7 **OTHER COMPANIES UNDER THE BANK HOLD-**
8 **ING COMPANY ACT.**

9 (a) DEFINITIONS.—Section 2 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. 1841) is amended—

11 (1) by striking subsection (a)(1) and inserting
12 the following:

13 “(a) BANK HOLDING COMPANY.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (5), the term ‘bank holding company’
16 means—

17 “(A) any company, other than a company
18 described in section 4(p), which has control over
19 any bank or over any company that is or be-
20 comes a bank holding company by virtue of this
21 Act; and

22 “(B) any section 6 holding company estab-
23 lished by a company described in section
24 6(a)(1)(C).”.

1 (2) in subsection (a)(5), by adding at the end
2 the following new subparagraph:

3 “(G) No company is a bank holding com-
4 pany by virtue of its ownership or control of a
5 section 6 holding company or any subsidiary of
6 a section 6 holding company, so long as the re-
7 quirements of sections 4(p) and 6 of this Act
8 are met, as applicable, by the section 6 holding
9 company;”;

10 (3) in subsection (c)(1)(A), by striking “insured
11 bank” and inserting “insured depository institu-
12 tion”, and by striking “section 3(h) of the Federal
13 Deposit Insurance Act” and inserting “section
14 3(c)(2) of the Federal Deposit Insurance Act”;

15 (4) in subsection (c)(2)—

16 (A) in subparagraph (B), by inserting be-
17 fore the period the following: “that is controlled
18 by a company that is a fraternal beneficiary so-
19 ciety, as defined in section 501(c)(8) of the In-
20 ternal Revenue Code of 1986, or a company
21 that is, together with all of its affiliates on a
22 consolidated basis, predominantly engaged in
23 the business of insurance”; and

24 (B) in subparagraph (F)(i), by inserting
25 before the semicolon the following: “, including

1 issuing credit cards and other credit devices (in-
2 cluding virtual or intangible devices) that func-
3 tion as credit cards”;

4 (C) in subparagraph (F)(v), by inserting
5 before the semicolon the following: “, other
6 than loans that otherwise meet the require-
7 ments of this subparagraph and are made to
8 businesses that meet the criteria for a small
9 business concern to be eligible for business
10 loans under regulations established by the
11 Small Business Administration under part 121
12 of title 13, Code of Federal Regulations”; and

13 (D) by striking subparagraph (H) and in-
14 serting the following:

15 “(H) An industrial loan company, indus-
16 trial bank, or other similar institution which—

17 “(i) is an institution organized under
18 the laws of a State which, on March 5,
19 1987, had in effect or had under consider-
20 ation in such State’s legislature a statute
21 which required or would require such insti-
22 tution to obtain insurance under the Fed-
23 eral Deposit Insurance Act;

24 “(ii) either—

1 “(I) does not accept demand de-
2 posits that the depositor may with-
3 draw by check or similar means for
4 payment to third parties;

5 “(II) has total assets of less than
6 \$100,000,000; or

7 “(III) the control of which is not
8 acquired by any company after Au-
9 gust 10, 1987;

10 “(iii) predominantly provides financial
11 products and services to current and
12 former members of the military and their
13 families; and

14 “(iv) is controlled by a savings and
15 loan holding company, as defined in sec-
16 tion 10(a) of the Home Owners’ Loan Act.

17 This subparagraph shall cease to apply to any
18 institution which permits any overdraft (includ-
19 ing any intraday overdraft), or which incurs
20 any such overdraft in such institution’s account
21 at a Federal Reserve bank, on behalf of an af-
22 filiate, if such overdraft is not the result of an
23 inadvertent computer or accounting error that
24 is beyond the control of both the institution and
25 the affiliate, or that is otherwise permissible for

1 a bank controlled by a company described in
2 section 1843(f)(1) of this title.”; and

3 (5) by adding at the end the following new sub-
4 section:

5 “(r) SECTION 6 HOLDING COMPANIES.—The term
6 ‘section 6 holding company’ means a company that is re-
7 quired to be established as an intermediate holding com-
8 pany under section 6 of this Act.”.

9 (b) NONBANKING ACTIVITIES EXCEPTIONS.—Section
10 4 of the Bank Holding Company Act of 1956 (12 U.S.C.
11 1843) is amended—

12 (1) in subsection (f)(1)(B) by striking “for pur-
13 poses of this Act” and inserting “for purposes of
14 section 4(a)”;

15 (2) in subsection (f)(2)—

16 (A) in subparagraph (B)(ii), by striking “;
17 or” and inserting a semicolon;

18 (B) in subparagraph (C), by striking the
19 period and inserting “; or”; and

20 (C) by adding at the end the following new
21 subparagraph:

22 “(D) such company fails to—

23 “(i) establish and register a section 6
24 holding company pursuant to section 6 of

1 this Act within 180 days after the adoption
2 of rules required by this section; and

3 “(ii) conduct all such activities which
4 are permissible for a financial holding com-
5 pany, as determined under section 4(k),
6 through such section 6 holding company,
7 other than—

8 “(I) internal financial activities
9 conducted for such company or any
10 affiliate, including, but not limited to
11 internal treasury, investment, and em-
12 ployee benefit functions, provided that
13 with respect to any internal financial
14 activity engaged in for the company or
15 an affiliate and a nonaffiliate during
16 the year prior to date of enactment,
17 the company (or an affiliate not a
18 subsidiary of the section 6 company)
19 may continue to engage in that activ-
20 ity so long as the at least two-thirds
21 of the assets or two-thirds of the reve-
22 nues generated from the activity are
23 from or attributable to the company
24 or an affiliate, subject to review by
25 the Board to determine whether en-

gaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

“(II) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.”; and

(3) by inserting at the end the following new subsections:

“(p) CERTAIN COMPANIES NOT SUBJECT TO THIS ACT.—

“(1) IN GENERAL.—Except as provided in paragraphs (6) and (7), any company which—

“(A) was—

“(i) on the date of enactment of the Financial Stability Improvement Act of 2009, a unitary savings and loan holding company that continues to control not

1 fewer than one savings association that it
2 controlled on May 4, 1999, or that it ac-
3 quired pursuant to an application pending
4 before the Office of Thrift Supervision on
5 or before that date, and that became a
6 bank for purposes of the Bank Holding
7 Company Act as a result of the enactment
8 of section 1301(a)(3) of the Financial Sta-
9 bility Improvement Act of 2009; or

10 “(ii) on November 23, 2009—

11 “(I) controlled an institution
12 which became a bank as a result of
13 the enactment of section
14 1301(a)(4)(B) of the Financial Sta-
15 bility Improvement Act of 2009;

16 “(II) had an application pending,
17 or approved but not executed, before
18 the Federal Deposit Insurance Cor-
19 poration, that, if approved, would per-
20 mit the applicant to control an indus-
21 trial loan company, industrial bank, or
22 other similar institution—

23 “(aa) that is a federally in-
24 sured, State-chartered depository
25 institution;

1 “(bb) that is organized
2 under the laws of a State that on
3 March 5, 1987, had in effect, or
4 had under consideration in the
5 legislature of such State, a stat-
6 ute that required such institution
7 to obtain insurance under the
8 Federal Deposit Insurance Act;
9 and

10 “(cc) that—

11 “(AA) does not accept
12 demand deposits that the
13 depositor may withdraw by
14 check or similar means for
15 payment to third parties; or

16 “(BB) maintains total
17 assets of less than
18 \$100,000,000; or

19 “(III) controlled an institution it
20 has continuously controlled since
21 March 5, 1987, which became a bank
22 as a result of the enactment of the
23 Competitive Equality Banking Act of
24 1987, pursuant to subsection (f);

25 “(B) was not on June 30, 2009—

1 “(i) a bank holding company; or

2 “(ii) subject to the Bank Holding
3 Company Act of 1956 by reason of section
4 8(a) of the International Banking Act of
5 1978 (12 U.S.C. 3106(a)); and

6 “(C) on June 30, 2009, directly or indi-
7 rectly controlled shares or engaged in activities
8 that did not, on the day before the date of en-
9 actment of the Financial Stability Act of 2009,
10 comply with the activity or investment restric-
11 tions on financial holding companies in section
12 4 in accordance with regulations prescribed by
13 the Board,
14 shall not be treated as a bank holding company for
15 purposes of this Act solely by virtue of such com-
16 pany’s control of such institution and control of a
17 section 6 holding company established pursuant to
18 section 6.

19 “(2) LOSS OF EXEMPTION.—A company de-
20 scribed in paragraph (1) shall no longer qualify for
21 the exemption provided under that paragraph if—

22 “(A) such company fails to—

23 “(i) establish and register a section 6
24 holding company pursuant to section 6 of
25 this Act within 180 days after adoption of

1 rules required by this section, unless the
2 Board grants an extension of such period
3 for compliance which shall not exceed 180
4 additional days; and

5 “(ii) maintain a section 6 holding
6 company in compliance with all the re-
7 quirements for a section 6 holding com-
8 pany under section 6 of this Act.

9 “(B) such company directly or indirectly
10 (including through the section 6 holding com-
11 pany it must form pursuant to this subsection
12 and section 6 of this Act) acquires control of an
13 additional bank or insured depository institu-
14 tion after June 30, 2009, provided that such
15 company directly or indirectly (including
16 through the section 6 holding company) may
17 acquire—

18 “(i) shares held as a bona fide fidu-
19 ciary (whether with or without the sole dis-
20 cretion to vote such shares);

21 “(ii) shares held by any person as a
22 bona fide fiduciary solely for the benefit of
23 employees of either the company described
24 in paragraph (1) or any subsidiary of that

1 company and the beneficiaries of those em-
2 ployees;

3 “(iii) shares held temporarily pursu-
4 ant to an underwriting commitment in the
5 normal course of an underwriting business;

6 “(iv) shares held in an account solely
7 for trading purposes;

8 “(v) shares over which no control is
9 held other than control of voting rights ac-
10 quired in the normal course of a proxy so-
11 licitation;

12 “(vi) loans or other accounts receiv-
13 able acquired from an insured depository
14 institution in the normal course of busi-
15 ness;

16 “(vii) shares or assets acquired in se-
17 curing or collecting a debt previously con-
18 tracted in good faith, during the 2-year pe-
19 riod beginning on the date of such acquisi-
20 tion or for such additional time (not ex-
21 ceeding 3 years) as the Board may permit
22 if the Board determines that such an ex-
23 tension will not be detrimental to the pub-
24 lic interest;

1 “(viii) shares or assets acquired di-
2 rectly or indirectly by a depository institu-
3 tion controlled by such company in a
4 transaction involving an insured depository
5 institution for which the Federal Deposit
6 Insurance Corporation has been appointed
7 as receiver or which has been found to be
8 in danger of default (as defined in section
9 3 of the Federal Deposit Insurance Act) by
10 the appropriate Federal or State authority;

11 “(ix) shares or assets of another in-
12 dustrial loan company meeting the require-
13 ments of this Act if such company continu-
14 ously controlled an industrial loan com-
15 pany since the date of enactment of the Fi-
16 nancial Stability Improvement Act of
17 2009; and

18 “(x) shares or assets of a savings as-
19 sociation acquired directly or indirectly by
20 the savings association controlled by such
21 company if such company continuously
22 controlled a savings association since the
23 date of enactment of the Financial Sta-
24 bility Improvement Act of 2009;

1 “(C)(i) the section 6 holding company re-
2 quired to be established by such company, or
3 any subsidiary bank of such company undergoes
4 a change in control after the date of enactment
5 of the Financial Stability Improvement Act of
6 2009, other than—

7 “(I) the merger or whole acquisition
8 of such parent company in a bona fide
9 merger or acquisition (as shall be deter-
10 mined by the Board, which is authorized to
11 find that a transaction is not a bona fide
12 merger or acquisition and thus results in
13 the loss of exemption), with a company
14 that is predominantly engaged in activities
15 not permissible for a financial holding com-
16 pany pursuant to section 4(k);

17 “(II) a change of control of an indus-
18 trial bank, its section 6 holding company,
19 or any entity that directly or indirectly
20 controls the industrial bank, in a trans-
21 action other than a merger described in
22 subclause (I), by an acquiring company
23 that is predominately engaged in activities
24 not permissible for a financial holding com-
25 pany pursuant to subsection (k), if—

1 “(aa) the transaction is approved
2 by the appropriate Federal banking
3 agency and the Board; and

4 “(bb) the industrial bank does
5 not thereafter establish a domestic
6 branch as defined in section 3(o) of
7 the Federal Deposit Insurance Act
8 (12 U.S.C. 1813(o));

9 “(III) an inadvertent acquisition of
10 control, as determined by the Board, if
11 such inadvertent acquisition of control is
12 reversed or rectified within 180 days of its
13 discovery; or

14 “(IV) the acquisition of additional
15 shares by a company that owned or con-
16 trolled 7.5 percent or more of any class of
17 such parent company’s outstanding voting
18 stock on or before June 30, 2009, and con-
19 tinuously owned or controlled at least such
20 7.5 percent since June 30, 2009.

21 “(ii) Nothing in this subparagraph shall be
22 construed as preventing the Board from requir-
23 ing compliance with this subsection, section 6
24 or the requirements of the Change in Bank
25 Control Act, as applicable to a company that is

1 permitted to acquire control without loss of the
2 exemption in this subsection 4(p)(2); or

3 “(D) any subsidiary bank of such company
4 engages in any activity after the date of enact-
5 ment of the Financial Stability Improvement
6 Act of 2009 which would have caused such in-
7 stitution to be a bank (as defined in section
8 2(e) of this Act, as in effect before such date)
9 if such activities had been engaged in before
10 such date.

11 “(3) DIVESTITURE IN CASE OF LOSS OF EX-
12 EMPTION.—If any company described in paragraph
13 (1) fails to qualify for the exemption provided under
14 paragraph (1) by operation of paragraph (2), such
15 exemption shall cease to apply to such company and
16 such company shall divest control of each bank it
17 controls before the end of the 180-day period begin-
18 ning on the date on which the company receives no-
19 tice from the Board that the company has failed to
20 continue to qualify for such exemption, unless, be-
21 fore the end of such 180-day period, the company
22 has—

23 “(A) either—

24 “(i) corrected the condition or ceased
25 the activity that caused the company to

1 fail to continue to qualify for the exemp-
2 tion; or

3 “(ii) submitted a plan to the Board
4 for approval to cease the activity or correct
5 the condition in a timely manner (which
6 shall not exceed 1 year); and

7 “(B) implemented procedures that are rea-
8 sonably adapted to avoid the reoccurrence of
9 such condition or activity.

10 “(4) SUBSECTION CEASES TO APPLY UNDER
11 CERTAIN CIRCUMSTANCES.—This subsection shall
12 cease to apply to any company described in para-
13 graph (1) if such company—

14 “(A) registers as a bank holding company
15 under section 2(a) of this Act;

16 “(B) immediately upon such registration,
17 complies with all of the requirements of this
18 chapter, and regulations prescribed by the
19 Board pursuant to this chapter, including the
20 nonbanking restrictions of this section; and

21 “(C) does not, at the time of such registra-
22 tion, control banks in more than one State, the
23 acquisition of which would be prohibited by sec-
24 tion 3(d) of this Act if an application for such

1 acquisition by such company were filed under
2 section 3(a) of this Act.

3 “(5) INFORMATION REQUIREMENT.—Each com-
4 pany described in paragraph (1) shall, within 60
5 days after the date of enactment of the Financial
6 Stability Improvement Act of 2009, provide the
7 Board with the name and address of such company,
8 the name and address of each bank such company
9 controls, and a description of each such bank’s ac-
10 tivities.

11 “(6) EXAMINATIONS AND REPORTS.—The
12 Board may, from time to time, examine a company
13 described in paragraph (1) or a bank controlled by
14 such a company, and may require reports under
15 oath from a company described in paragraph (1),
16 and appropriate officers or directors of such com-
17 pany, in each case solely for purposes of assuring
18 compliance with the provisions of this subsection and
19 enforcing such compliance.

20 “(7) LIMITED ENFORCEMENT.—

21 “(A) IN GENERAL.—In addition to any
22 other power of the Board, the Board may en-
23 force compliance with the provisions of this sub-
24 section which are applicable to any company de-
25 scribed in paragraph (1), and any bank con-

1 trolled by such company, under section 8 of the
2 Federal Deposit Insurance Act, and such com-
3 pany or bank shall be subject to such section
4 (for such purposes) in the same manner and to
5 the same extent as if such company were a
6 bank holding company.

7 “(B) APPLICATION OF OTHER ACT.—Any
8 violation of this subsection by any company de-
9 scribed in paragraph (1) or any bank controlled
10 by such a company, may also be treated as a
11 violation of the Federal Deposit Insurance Act
12 for purposes of subparagraph (A).

13 “(C) NO EFFECT ON OTHER AUTHOR-
14 ITY.—No provision of this paragraph shall be
15 construed as limiting any authority of the
16 Board or any other Federal agency under any
17 other provision of law.

18 “(8) UNITARY SAVINGS AND LOAN HOLDING
19 COMPANY DEFINED.—For purposes of this sub-
20 section, the term ‘unitary savings and loan holding
21 company’ means a company that was a savings and
22 loan holding company on May 4, 1999 (as then de-
23 fined), or that became a savings and loan holding
24 company pursuant to an application pending before

1 the Office of Thrift Supervision on or before that
2 date, and—

3 “(A) that controls—

4 “(i) only 1 savings association; or

5 “(ii) more than 1 savings association,
6 if all, or all but 1, of the savings associa-
7 tion subsidiaries of such company were ini-
8 tially acquired by the company pursuant to
9 a supervisory transaction under section
10 1823(c), 1823(i), or 1823(k) of this title,
11 or section 408(m) of the National Housing
12 Act (12 U.S.C. 1730a(m));

13 “(B) all of the savings association subsidi-
14 aries of such company are qualified thrift lend-
15 ers (as determined under section 10 of the
16 Home Owners’ Loan Act); and

17 “(C) that continues to control not fewer
18 than 1 savings association that it controlled on
19 May 4, 1999, or that it acquired pursuant to an
20 application pending before the Office of Thrift
21 Supervision on or before that date.

22 “(q) PRESERVATION OF CERTAIN SAVINGS AND
23 LOAN HOLDING COMPANY AUTHORITIES.—Notwith-
24 standing subsection (a), a company that was a savings and
25 loan holding company on June 30, 2009, that became a

1 bank holding company by operation of section 1301 of the
2 Financial Stability Improvement Act of 2009 may con-
3 tinue to engage in the following activities in which such
4 company was continuously engaged on June 30, 2009,
5 through the day of enactment of the Financial Stability
6 Improvement Act of 2009:

7 “(1) Furnishing or performing management
8 services for a savings association subsidiary of such
9 company.

10 “(2) Conducting an insurance agency or escrow
11 business.

12 “(3) Holding, managing, or liquidating assets
13 owned or acquired from a savings association sub-
14 sidiary of such company.

15 “(4) Holding or managing properties used or
16 occupied by a savings association subsidiary of such
17 company.

18 “(5) Acting as trustee under deed of trust.

19 “(6) Any other activity in which multiple sav-
20 ings and loan holding companies were authorized (by
21 regulation) to directly engage on March 5, 1987.”.

22 (c) SECTION 6 HOLDING COMPANIES.—The Bank
23 Holding Company Act of 1956 (12 U.S.C. 1841 et seq.)
24 is amended by inserting after section 5 the following new
25 section:

1 **“SEC. 6. SPECIAL-PURPOSE HOLDING COMPANIES.**

2 “(a) ESTABLISHMENT, PURPOSE AND REQUIRE-
3 MENTS OF SPECIAL PURPOSE HOLDING COMPANIES.—

4 “(1) REQUIREMENT.—A special purpose hold-
5 ing company (hereafter in this section referred to as
6 a ‘section 6 holding company’) shall be established
7 and maintained by a company—

8 “(A) described in section 4(f)(1) as re-
9 quired by section 4(f)(2)(D) of this Act;

10 “(B) described in section 4(p)(1) as re-
11 quired by section 4(p)(2)(A) of this Act; or

12 “(C) that—

13 “(i) is subject to stricter prudential
14 standards under section 1103 of the Fi-
15 nancial Stability Improvement Act of
16 2009;

17 “(ii) is not—

18 “(I) a bank holding company; or

19 “(II) subject to the Bank Hold-
20 ing Company Act by reason of section
21 8(a) of the International Banking Act
22 of 1978 (12 U.S.C. 3106(a)); and

23 “(iii) directly or indirectly controlled
24 shares or engaged in activities that did
25 not, on the date the company is first sub-
26 ject to stricter prudential standards pursu-

1 ant to subtitle B of the Financial Stability
2 Improvement Act of 2009, comply with the
3 activity or investment restrictions on finan-
4 cial holding companies in section 4 in ac-
5 cordance with regulations prescribed by the
6 Board.

7 “(2) PURPOSE.—

8 “(A) The purpose of this section is to pro-
9 vide for consolidated supervision of certain fi-
10 nancial companies by the Board.

11 “(B) A company that is required to form
12 a section a section 6 holding company shall con-
13 duct all such activities which are permissible for
14 a financial holding company, as determined
15 under section 4(k), through such section 6 hold-
16 ing company, other than—

17 “(i) internal financial activities con-
18 ducted for such company or any affiliate,
19 including, but not limited to internal treas-
20 ury, investment, and employee benefit
21 functions, provided that with respect to
22 any internal financial activity engaged in
23 for the company or an affiliate and a non-
24 affiliate during the year prior to date of
25 enactment, the company (or an affiliate

1 not a subsidiary of the section 6 company)
2 may continue to engage in that activity so
3 long as the at least $\frac{2}{3}$ of the assets or $\frac{2}{3}$
4 of the revenues generated from the activity
5 are from or attributable to the company or
6 an affiliate, subject to review by the Board
7 to determine whether engaging in such ac-
8 tivity presents undue risk to the section 6
9 company or undue systemic risk; and

10 “(ii) financial activities involving the
11 provision of credit for the purchase or
12 lease of products or services from an affil-
13 iate or for the purchase or lease of prod-
14 ucts produced by an affiliate of such sec-
15 tion 6 holding company that is not a sub-
16 sidiary of such section 6 holding company,
17 in accordance with regulations prescribed
18 by or orders issued by the Board, pursuant
19 to section 6 of this Act.

20 “(C) A section 6 holding company shall be
21 prohibited from conducting any nonbanking ac-
22 tivities or investing in any nonbank companies
23 other than those permissible for a financial
24 holding company under sections 3 and 4, unless
25 the Board specifically determines otherwise in

1 accordance with paragraph (6), and provided
2 that, for purposes of this paragraph, a company
3 designated as a section 6 holding company and
4 described under paragraph (4) (or any per-
5 mitted successor) is not prohibited from con-
6 tinuing to engage in any impermissible activity
7 in which it was engaged continuously during the
8 6 months prior to the date of enactment, from
9 owning any shares or types of assets related to
10 such activity, or continuing to own such other
11 shares or assets that it owned on the date of
12 enactment.

13 “(3) REGISTRATION.—

14 “(A) A section 6 holding company required
15 to be established by a company described in
16 paragraph (1)(A) shall be established, and such
17 company shall register with the Board as a
18 bank holding company, pursuant to the require-
19 ments in section 4(f).

20 “(B) A section 6 holding company required
21 to be established by a company described in
22 paragraph (1)(B) shall be established, and such
23 company shall register with the Board as a
24 bank holding company, pursuant to the require-
25 ments in section 4(p).

1 “(C) A section 6 holding company required
2 to be established by a company described in
3 paragraph (1)(C) shall be—

4 “(i) established, and such company
5 shall register with the Board within 90
6 days after such company or such com-
7 pany’s parent holding company has been
8 notified by the Board that such company is
9 subject to stricter prudential standards
10 under section 1103 of the Financial Sta-
11 bility Improvement Act of 2009, unless the
12 Board grants an extension of such period
13 for compliance which shall not exceed 180
14 additional days;

15 “(ii) subject to the provisions of this
16 Act and other Federal law as provided in
17 section 1103(g) of the Financial Stability
18 Improvement Act of 2009; and

19 “(iii) subject to the authority of the
20 Board to enforce compliance with the pro-
21 visions of this section under section 8 of
22 the Federal Deposit Insurance Act in the
23 same manner and to the same extent as if
24 such company were a bank holding com-
25 pany.

1 “(4) RULE OF CONSTRUCTION.—For purposes
2 of this section, designation of an already established
3 intermediate holding company that will serve as the
4 section 6 holding company shall satisfy the require-
5 ment to establish a section 6 holding company, pro-
6 vided that such existing intermediate holding com-
7 pany complies with all other provisions applicable to
8 a section 6 holding company.

9 “(5) LIMITATIONS ON AUTHORITY OF COMMER-
10 CIAL PARENT.—A company that is not a bank hold-
11 ing company or treated as a bank holding company
12 pursuant to section 8(a) of the International Bank
13 Act of 1978 that has been notified that it is a finan-
14 cial holding company subject to stricter standards,
15 pursuant to section 1103 of the Financial Stability
16 Improvement Act of 2009, shall—

17 “(A) not be deemed to be, or treated as, a
18 bank holding company, solely because of its
19 ownership or control of a section 6 holding com-
20 pany; and

21 “(B) not be subject to this Act, except for
22 such provisions as are explicitly made applicable
23 in this section.

24 “(6) BOARD AUTHORITY.—

1 “(A) RULES AND EXEMPTIONS.—In addi-
2 tion to any other authority of the Board, the
3 Board shall prescribe rules and regulations or
4 issue orders providing for the establishment and
5 registration of section 6 holding companies and
6 shall provide exemptions from the requirements
7 of this Act (including an order in response to
8 a request from an affected company), including,
9 but not limited to, exemptions—

10 “(i) with respect to the requirement to
11 conduct such activities which are financial
12 in nature, as determined under section
13 4(k), other than financial activities con-
14 ducted for such company or any affiliate,
15 including any financial activity engaged in
16 for both the company or an affiliate and a
17 nonaffiliate as permitted under section
18 4(f)(2)(D) or section 6(a)(2)(B) and finan-
19 cial activities involving the provision of
20 credit for the purchase or lease of products
21 or services from an affiliate or for the pur-
22 chase or lease of products produced by an
23 affiliate of such section 6 holding company
24 that is not a subsidiary of such section 6
25 holding company, through such section 6

1 holding company, if the Board makes a
2 finding that such exemption—

3 “(I)(aa) would facilitate the ex-
4 tension of credit to individuals, house-
5 holds, and businesses; or

6 “(bb) would allow for greater ef-
7 ficiency, improved customer service, or
8 other public benefits in the conduct of
9 financial activities by affected compa-
10 nies;

11 “(II) would not threaten the
12 safety and soundness of the section 6
13 holding company, or of any insured
14 depository institution or other sub-
15 sidiary of the section 6 holding com-
16 pany;

17 “(III) would not increase sys-
18 temic risk or threaten the stability of
19 the overall financial system;

20 “(IV) would not, as applied to
21 the activities that are the subject of
22 the rule, order or request, result in
23 substantially lessening competition, or
24 to tend to create a monopoly, or which
25 in any other manner would be in re-

1 strait of trade, unless the Board
2 finds that the anticompetitive effects
3 are outweighed in the public interest
4 by the probable effect of the exemp-
5 tion in meeting the convenience and
6 needs of the community to be served;
7 and

8 “(V) would meet the financial
9 and managerial standards for finan-
10 cial holding companies described in
11 subparagraphs (A) and (B) of section
12 4(j)(4); and

13 “(ii) from the affiliate transaction re-
14 quirements of subsection (b), including but
15 not limited to exemptions that would facili-
16 tate extensions of credit to unaffiliated
17 persons for the personal, household, or
18 business purposes of such unaffiliated per-
19 sons, unless the Board makes a finding
20 that such exemption—

21 “(I) is not consistent with the
22 purposes of section 23A and section
23 23B of the Federal Reserve Act;

24 “(II) would threaten the safety
25 and soundness of the section 6 hold-

1 ing company, or any insured deposi-
2 tory institution or other subsidiary of
3 the section 6 holding company;

4 “(III) would increase systemic
5 risk or threaten the stability of the
6 overall financial system;

7 “(IV) would not, as applied to
8 the activities that are the subject of
9 the rule, order or request result in
10 substantially lessening competition, or
11 to tend to create a monopoly, or which
12 in any other manner would be in re-
13 straint of trade, unless the Board
14 finds that the anticompetitive effects
15 are outweighed in the public interest
16 by the probable effect of the exemp-
17 tion in meeting the convenience and
18 needs of the community to be served;
19 or

20 “(V) would permit an unfair, de-
21 ceptive, abusive, or unsafe-and-un-
22 sound act or practice.

23 “(B) PARENT COMPANY REPORTS.—The
24 Board may, from time to time, require reports
25 under oath from a company that controls a sec-

tion 6 holding company, and appropriate officers or directors of such company, solely for purposes of ensuring compliance with the provisions of this section (including assessing the company's ability to serve as a source of financial strength pursuant to subsection (g)) and enforcing such compliance.

“(C) LIMITED PARENT COMPANY ENFORCEMENT.—

“(i) IN GENERAL.—In addition to any other power of the Board, the Board may enforce compliance with the provisions of this subsection which are applicable to any company described in paragraph (1), and any bank controlled by such company, under section 8 of the Federal Deposit Insurance Act and such company or bank shall be subject to such section (for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

“(ii) APPLICATION OF OTHER ACT.—Any violation of this subsection by any company that controls a section 6 holding company or any bank controlled by such a

1 company, may also be treated as a viola-
2 tion of the Federal Deposit Insurance Act
3 for purposes of clause (i).

4 “(iii) NO EFFECT ON OTHER AUTHOR-
5 ITY.—No provision of this subparagraph
6 shall be construed as limiting any author-
7 ity of the Board or any other Federal
8 agency under any other provision of law.

9 “(b) RESTRICTIONS ON AFFILIATE TRANS-
10 ACTIONS.—

11 “(1) SECTION 23A AND 23B APPLICABILITY.—

12 “(A) IN GENERAL.—Transactions between
13 a section 6 holding company (or any nonbank
14 subsidiary thereof) and any affiliate not con-
15 trolled by the section 6 holding company shall
16 be subject to the restrictions and limitations
17 contained in section 23A and section 23B of the
18 Federal Reserve Act as if the section 6 holding
19 company were a member bank, provided, that a
20 transaction that otherwise would be a covered
21 transaction shall not be a covered transaction if
22 the transaction is in connection with the bona
23 fide acquisition or lease by an unaffiliated per-
24 son of assets, goods or services but shall be sub-

1 ject to review under section 23A(f)(1) of such
2 Act.

3 “(B) COVERED TRANSACTIONS.—A deposi-
4 tory institution controlled by a section 6 holding
5 company may not engage in a covered trans-
6 action (as defined in section 23A(b)(7) of the
7 Federal Reserve Act) with any affiliate that is
8 not the section 6 holding company or a sub-
9 sidiary of the section 6 holding company; pro-
10 vided that, for purposes of the prohibition, a
11 transaction that otherwise would be a covered
12 transaction shall not be a covered transaction if
13 the transaction is in connection with the bona
14 fide acquisition or lease by an unaffiliated per-
15 son of assets, goods or services, but shall be
16 subject to review under section 23A(f)(1) of the
17 Federal Reserve Act.

18 “(2) RULE OF CONSTRUCTION.—No provision
19 of this subsection shall be construed as exempting
20 any subsidiary insured depository institution of a
21 section 6 holding company from compliance with sec-
22 tion 23A or 23B of the Federal Reserve Act with re-
23 spect to each affiliate of such institution (as defined
24 in section 23A or 23B of the Federal Reserve Act),
25 including any affiliate that is the section 6 holding

1 company or subsidiary of the section 6 holding com-
2 pany.

3 “(c) TYING PROVISIONS.—A company that directly or
4 indirectly controls a section 6 holding company shall be—

5 “(1) treated as a bank holding company for
6 purposes of section 106 of the Bank Holding Com-
7 pany Act Amendments of 1970 and section 22(h) of
8 the Federal Reserve Act and any regulation pre-
9 scribed under any such section; and

10 “(2) subject to the restrictions of section 106 of
11 the Bank Holding Company Act Amendments of
12 1970, in connection with any transaction involving
13 the products or services of such company or affiliate
14 and those of a bank affiliate, as if such company or
15 affiliate were a bank and such bank were a sub-
16 sidiary of a bank holding company.

17 “(d) FINANCIAL HOLDING COMPANY REQUIRE-
18 MENTS.—A section 6 holding company shall be subject
19 to—

20 “(1) the conditions for engaging in expanded fi-
21 nancial activities in section 4(l); and

22 “(2) the provisions applicable to financial hold-
23 ing companies that fail to meet certain requirements
24 in section 4(m).

1 “(e) INDEPENDENCE OF SECTION 6 HOLDING COM-
2 PANY.—

3 “(1) No less than 25 percent of the members
4 of the board of directors of a section 6 holding com-
5 pany, and each subsidiary of a section 6 holding
6 company, shall be independent of the parent com-
7 pany of the section 6 holding company and any sub-
8 sidiary of such parent company. For purposes of this
9 subsection, a director shall be independent of the
10 parent company if such person is not currently serv-
11 ing, and has not within the previous 2-year period
12 served, as a director, officer, or employee of any af-
13 filiate of the section 6 holding company that is not
14 a subsidiary of the section 6 holding company.

15 “(2) No executive officer of a section 6 holding
16 company or any subsidiary of a section 6 holding
17 company may serve as a director, officer, or em-
18 ployee of an affiliate of the section 6 holding com-
19 pany that is not a subsidiary of the section 6 holding
20 company.

21 “(3) The Board shall issue regulations that re-
22 quire effective legal and operational separation of
23 the functions of a section 6 holding company from
24 its affiliates that are not subsidiaries of such section
25 6 holding company, provided, however that such

1 rules shall not require operational separation of in-
2 ternal functions including, but not limited to, human
3 resources management, employee benefit plans, and
4 information technology.

5 “(f) SOURCE OF STRENGTH.—A company that di-
6 rectly or indirectly controls a section 6 holding company
7 shall serve as a source of financial strength to its sub-
8 sidiary section 6 holding company.”.

9 **SEC. 1302. REGISTRATION OF CERTAIN COMPANIES AS**
10 **BANK HOLDING COMPANIES.**

11 Section 5 of the Bank Holding Company Act of 1956
12 (12 U.S.C. 1844) is amended by inserting at the end the
13 following new subsection:

14 “(h) CONVERSION TO BANK HOLDING COMPANY BY
15 OPERATION OF LAW.—

16 “(1) CONVERSION BY OPERATION OF LAW.—A
17 company that, on the day before the date of enact-
18 ment of the Financial Stability Improvement Act of
19 2009, was not a bank holding company but which,
20 by reason of section 1301 of the Financial Stability
21 Improvement Act of 2009 becomes a bank holding
22 company, other than a section 6 holding company,
23 by operation of law, shall register as a bank holding
24 company with the Board in accordance with section

1 5(a) within 90 days of the date of enactment of that
2 Act.

3 “(2) COMPLIANCE WITH BANK HOLDING COM-
4 PANY ACT.—With respect to any company described
5 in paragraph (1), the Board may grant temporary
6 exemptions or provide other appropriate temporary
7 relief to permit such company to implement meas-
8 ures necessary to comply with the requirements
9 under the Bank Holding Company Act.”.

10 **SEC. 1303. REPORTS AND EXAMINATIONS OF BANK HOLD-**
11 **ING COMPANIES; REGULATION OF FUNCTION-**
12 **ALLY REGULATED SUBSIDIARIES.**

13 (a) REPORTS OF BANK HOLDING COMPANIES.—Sec-
14 tions 5(c)(1)(A) and (B) of the Bank Holding Company
15 Act of 1956 (12 U.S.C. 1844(c)(1)(A) and (B)) are
16 amended to read as follows:

17 “(A) IN GENERAL.—The Board, from time
18 to time, may require a bank holding company
19 and any subsidiary of such company to submit
20 reports under oath that the Board determines
21 are necessary or appropriate for the Board to
22 carry out the purposes of this chapter, prevent
23 evasions thereof, and monitor compliance by the
24 company or subsidiary with the applicable pro-
25 visions of law.

1 “(B) USE OF EXISTING REPORTS.—

2 “(i) IN GENERAL.—The Board shall,
3 to the fullest extent possible, use—

4 “(I) reports that a bank holding
5 company or any subsidiary of such
6 company has been required to provide
7 to other Federal or State regulatory
8 agencies;

9 “(II) information that is other-
10 wise required to be reported publicly;
11 and

12 “(III) externally audited financial
13 statements.

14 “(ii) AVAILABILITY.—A bank holding
15 company or a subsidiary of such company
16 shall promptly provide to the Board, at the
17 request of the Board, a report referred to
18 in clause (i)(I).”.

19 (b) FUNCTIONALLY REGULATED SUBSIDIARY.—Sec-
20 tion 5(c)(1) of the Bank Holding Company Act of 1956
21 (12 U.S.C. 1844(c)(1)) is amended by inserting at the end
22 the following new subparagraph:

23 “(C) DEFINITION.—For purposes of this
24 subsection and section 6, the term ‘functionally
25 regulated subsidiary’ means any subsidiary

(other than a depository institution) of a bank holding company that is—

“(i) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(ii) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency;

“(iii) an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, for which the Securities and Exchange Commission is the Federal regulatory agency, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; and

“(iv) a futures commission merchant, commodity trading advisor, and commodity

1 pool operator registered with the Com-
2 modity Futures Trading Commission
3 under the Commodity Exchange Act, for
4 which the Commodity Futures Trading
5 Commission is the Federal regulatory
6 agency, with respect to the commodities
7 activities of such entity and activities inci-
8 dental to such commodities activities.”.

9 (c) EXAMINATIONS OF BANK HOLDING COMPA-
10 NIES.—Sections 5(c)(2)(A) and (B) of the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1844(c)(2)(A) and (B))
12 are amended to read as follows:

13 “(A) IN GENERAL.—The Board may make
14 examinations of a bank holding company and
15 any subsidiary of such a company to carry out
16 the purposes of this chapter, prevent evasions
17 thereof, and monitor compliance by the com-
18 pany or subsidiary with applicable provisions of
19 law.

20 “(B) FUNCTIONALLY REGULATED AND DE-
21 POSITORY INSTITUTION SUBSIDIARIES.—The
22 Board shall, to the fullest extent possible, use
23 reports of examination of functionally regulated
24 subsidiaries and subsidiary depository institu-

1 tions made by other Federal or State regulatory
2 authorities.”.

3 (d) REGULATION OF FINANCIAL HOLDING COMPA-
4 NIES.—Section 5(c)(2) of the Bank Holding Company Act
5 of 1956 (12 U.S.C. 1844(c)) is amended by striking sub-
6 paragraphs (C), (D), and (E).

7 (e) AUTHORITY TO REGULATE FUNCTIONALLY REG-
8 ULATED SUBSIDIARIES OF BANK HOLDING COMPA-
9 NIES.—The Bank Holding Company Act of 1956 (12
10 U.S.C. 1841 et seq.) is amended by striking section 10A
11 (12 U.S.C. 1848a).

12 **SEC. 1304. REQUIREMENTS FOR FINANCIAL HOLDING COM-**
13 **PANIES TO REMAIN WELL CAPITALIZED AND**
14 **WELL MANAGED.**

15 Section 4(l)(1) of the Bank Holding Company Act of
16 1956 (12 U.S.C. 1843(l)(1)) is amended—

17 (1) in subparagraph (B), by striking “and”;

18 (2) by redesignating subparagraph (C) as sub-
19 paragraph (D);

20 (3) by inserting after subparagraph (B) the fol-
21 lowing new subparagraph:

22 “(C) the bank holding company is well
23 capitalized and well managed; and”; and

24 (4) in subparagraph (D) (as so redesignated)
25 by amending clause (ii) to read as follows:

1 “(ii) a certification that the company
2 meets the requirements of subparagraphs
3 (A) through (C).”.

4 **SEC. 1305. STANDARDS FOR INTERSTATE ACQUISITIONS.**

5 (a) BANK HOLDING COMPANY ACT OF 1956 AMEND-
6 MENT.—Section 3(d)(1)(A) of the Bank Holding Company
7 Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended—

8 (1) by striking “adequately capitalized” and in-
9 serting “well capitalized”; and

10 (2) by striking “adequately managed” and in-
11 serting “well managed”.

12 (b) FEDERAL DEPOSIT INSURANCE ACT AMEND-
13 MENT.—Section 44(b)(4)(B) of the Federal Deposit In-
14 surance Act (12 U.S.C. 1831u(b)(4)(B)) is amended to
15 read as follows:

16 “(B) the responsible agency determines
17 that the resulting bank will be well capitalized
18 and well managed upon the consummation of
19 the transaction.”.

20 **SEC. 1306. ENHANCING EXISTING RESTRICTIONS ON BANK**
21 **TRANSACTIONS WITH AFFILIATES.**

22 (a) Section 23A of the Federal Reserve Act (12
23 U.S.C. 371c) is amended—

1 (1) in subsection (b)(1), by striking subpara-
2 graph (D) and inserting the following new subpara-
3 graph:

4 “(D) any investment fund with respect to
5 which a member bank or affiliate thereof is an
6 investment adviser; and”;

7 (2) in subsection (b)(7)(A), by inserting “(in-
8 cluding a purchase of assets subject to an agreement
9 to repurchase)” after “affiliate”;

10 (3) in subsection (b)(7)(C), by striking “, in-
11 cluding assets subject to an agreement to repur-
12 chase,”;

13 (4) in subsection (b)(7)(D)—

14 (A) by inserting “or other debt obliga-
15 tions” after “acceptance of securities”; and

16 (B) by striking “or” after the semicolon;

17 (5) in subsection (b)(7), by inserting at the end
18 the following new subparagraphs:

19 “(F) any securities borrowing and lending
20 transactions with an affiliate to the extent that
21 the transactions create credit exposure of the
22 member bank to the affiliate; or

23 “(G) current and potential future credit
24 exposure to the affiliate on derivative trans-
25 actions with the affiliate;”;

1 (6) in subsection (c)(1), by striking “at the
2 time of the transaction,” and inserting “at all
3 times”;

4 (7) in subsection (c)—

5 (A) by striking paragraph (2);

6 (B) by redesignating paragraphs (3), (4),
7 and (5) as paragraphs (2), (3), and (4), respec-
8 tively;

9 (8) in subsection (c)(3) (as so redesignated by
10 paragraph (7)), by inserting “or other debt obliga-
11 tions” after “securities”;

12 (9) in subsection (f)(2), by inserting at the end
13 the following: “The Board may not, by regulation or
14 order, grant an exemption under this section unless
15 the Board obtains the concurrence of the Chairman
16 of the Federal Deposit Insurance Corporation.”; and

17 (10) in subsection (f)—

18 (A) by redesignating paragraph (3) as
19 paragraph (4); and

20 (B) and inserting after paragraph (2) the
21 following new paragraph:

22 “(3) CONCURRENCE OF THE COMPTROLLER OF
23 THE CURRENCY.—With respect to a transaction or
24 relationship involving a national bank or Federal
25 savings association, the Board may not grant an ex-

10 “(3) The Board may not grant an exemption or
11 exclusion under this section unless the Board ob-
12 tains the concurrence of the Chairman of the Fed-
13 eral Deposit Insurance Corporation.”.

16 Section 23A(e) of the Federal Reserve Act (12 U.S.C.
17 371c(e)) is amended—

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1 **SEC. 1308. LENDING LIMITS APPLICABLE TO CREDIT EXPO-**
2 **SURE ON DERIVATIVE TRANSACTIONS, RE-**
3 **PURCHASE AGREEMENTS, REVERSE REPUR-**
4 **CHASE AGREEMENTS, AND SECURITIES**
5 **LENDING AND BORROWING TRANSACTIONS.**

6 Section 5200 of the Revised Statutes of the United
7 States (12 U.S.C. 84) is amended—

8 (1) in subsection (b)(1), by striking “shall in-
9 clude all direct or indirect” and all that follows
10 through “commitment;” and inserting: “shall in-
11 clude—

12 “(A) all direct or indirect advances of
13 funds to a person made on the basis of any ob-
14 ligation of that person to repay the funds or re-
15 payable from specific property pledged by or on
16 behalf of the person;

17 “(B) to the extent specified by the Comp-
18 troller of the Currency, such term shall also in-
19 clude any liability of a national banking associa-
20 tion to advance funds to or on behalf of a per-
21 son pursuant to a contractual commitment; and

22 “(C) credit exposure to a person arising
23 from a derivative transaction, repurchase agree-
24 ment, reverse repurchase agreement, securities
25 lending transaction, or securities borrowing

1 transaction between the national banking asso-
2 ciation and the person;”;

3 (2) in subsection (b)(2) by striking the period
4 at the end and inserting “; and”;

5 (3) in subsection (b), by inserting after para-
6 graph (2) the following new paragraph:

7 “(3) the term ‘derivative transaction’ means
8 any transaction that is a contract, agreement, swap,
9 warrant, note, or option that is based, in whole or
10 in part, on the value of, any interest in, or any
11 quantitative measure or the occurrence of any event
12 relating to, one or more commodities, securities, cur-
13 rencies, interest or other rates, indices, or other as-
14 sets.”; and

15 (4) in subsection (d), by inserting after para-
16 graph (2) the following new paragraph:

17 “(3) The Comptroller of the Currency shall pre-
18 scribe rules to administer and carry out the pur-
19 poses of this section with respect to credit exposures
20 arising from any derivative transaction, repurchase
21 agreement, reverse repurchase agreement, securities
22 lending transaction, or securities borrowing trans-
23 action. Rules required to be prescribed under this
24 paragraph (3) shall take effect, in final form, not

1 later than 180 days after the date of enactment of
2 the Financial Stability Improvement Act of 2009.”.

3 **SEC. 1309. RESTRICTION ON CONVERSIONS OF TROUBLED**
4 **BANKS AND THRIFTS.**

5 (a) CONVERSION OF A NATIONAL BANKING ASSOCIA-
6 TION TO A STATE BANK.—The National Bank Consolida-
7 tion and Merger Act (12 U.S.C. 215 et seq.) is amended
8 by redesignating section 7 as section 8 and by inserting
9 after section 6 the following:

10 **“SEC. 7. PROHIBITION ON CERTAIN CONVERSIONS.**

11 “A national bank may not convert to a State bank
12 during any period of time in which it is subject to a cease
13 and desist order, memorandum of understanding, or other
14 enforcement action entered into with or issued by the
15 Comptroller of the Currency.”.

16 (b) CONVERSION OF A STATE BANK TO A NATIONAL
17 BANK.—Section 5154 of the Revised Statutes (12 U.S.C.
18 35) is amended by adding at the end the following new
19 sentence: “The Comptroller of the Currency shall not ap-
20 prove the conversion of a State bank to a national bank
21 during any period of time in which the State bank is sub-
22 ject to a cease and desist order, memorandum of under-
23 standing, or other enforcement action entered into or
24 issued by a State bank supervisor, the Federal Deposit

1 Insurance Corporation, the Board of Governors of the
2 Federal Reserve System or a Federal Reserve Bank.”.

3 (c) CONVERSION BETWEEN A FEDERAL SAVINGS AS-
4 SOCIATION AND A STATE SAVINGS ASSOCIATION.—Section
5 5(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i))
6 is amended by adding at the end the following new para-
7 graph:

8 “(6) PROHIBITION ON CERTAIN CONVER-
9 SIONS.—A Federal savings association may not con-
10 vert to a State savings association, and a State sav-
11 ings association may not convert to a Federal sav-
12 ings association, during any period of time in which
13 such savings association is subject to a cease and de-
14 sist order, memorandum of understanding, or other
15 enforcement action entered into with or issued by
16 the Director of the Office of Thrift Supervision or
17 a State savings association supervisor.”.

18 **SEC. 1310. LENDING LIMITS TO INSIDERS.**

19 Section 22(h)(9)(D)(ii) of the Federal Reserve Act
20 (12 U.S.C. 375b(h)(9)(D)(ii)) is amended by inserting “,
21 except that a member bank shall be deemed to have ex-
22 tended credit to a person if the member bank has credit
23 exposure to the person arising from a derivative trans-
24 action, repurchase agreement, reverse repurchase agree-
25 ment, securities lending transaction, or securities bor-

1 rowing transaction between the member bank and the per-
2 son” before the period at the end.

3 **SEC. 1311. LIMITATIONS ON PURCHASES OF ASSETS FROM**
4 **INSIDERS.**

5 (a) Section 18 of the Federal Deposit Insurance Act
6 (12 U.S.C. 1828) is amended by inserting at the end the
7 following new subsection:

8 “(y) GENERAL PROHIBITION.—An insured deposi-
9 tory institution shall not purchase an asset from, or sell
10 an asset to, one of its executive officers, directors, or prin-
11 cipal shareholders or any related interest of such person
12 (as such terms are defined in section 22(h) of Federal Re-
13 serve Act) unless the transaction is on market terms and,
14 if the transaction represents more than 10 percent of the
15 institution’s capital stock and surplus, the transaction has
16 been approved in advance by a majority of the institution’s
17 board of directors (with interested directors of the insured
18 depository institution not participating in the approval of
19 the transaction).”.

20 (b) FDIC RULEMAKING AUTHORITY.—The Federal
21 Deposit Insurance Corporation may prescribe rules to im-
22 plement the requirements of subsection (a) and the
23 amendments made by subsection (a).

1 (c) AMENDMENTS TO THE FEDERAL RESERVE
2 ACT.—Section 22 of the Federal Reserve Act (12 U.S.C.
3 375) is amended by striking subsection (d).

4 **SEC. 1312. RULES REGARDING CAPITAL LEVELS OF BANK**
5 **HOLDING COMPANIES.**

6 Section 5(b) of the Bank Holding Company Act of
7 1956 (12 U.S.C. 1844(b)) is amended by inserting “, in-
8 cluding regulations relating to the capital levels of bank
9 holding companies” before the period at the end.

10 **SEC. 1313. ENHANCEMENTS TO FACTORS TO BE CONSID-**
11 **ERED IN CERTAIN ACQUISITIONS.**

12 (a) BANK ACQUISITIONS.—Section 3(c) of the Bank
13 Holding Company Act of 1956 (12 U.S.C. 1842(c)) is
14 amended by inserting at the end the following new para-
15 graph:

16 “(7) FINANCIAL STABILITY.—

17 “(A) IN GENERAL.—In every case, the
18 Board shall take into consideration the extent
19 to which the proposed acquisition, merger, or
20 consolidation may pose risk to the stability of
21 the United States financial system or the econ-
22 omy of the United States, including the result-
23 ing scope, nature, size, scale, concentration, or
24 interconnectedness of activities that are finan-
25 cial in nature.

1 “(B) STANDARDS FOR APPROVAL.—The
2 Board may in its sole discretion disapprove any
3 acquisition, merger, or consolidation of, or by,
4 a financial holding company subject to stricter
5 standards if the Board determines that the re-
6 sulting concentration of liabilities on a consoli-
7 dated basis is likely to pose a great threat to
8 financial stability during times of severe eco-
9 nomic distress.”.

10 (b) NONBANK ACQUISITIONS.—

11 (1) Section 4(j)(2)(A) of the Bank Holding
12 Company is amended by—

13 (A) striking “or” before “unsound banking
14 practices”; and

15 (B) inserting before the period at the end
16 the following: “, or risk to the stability of the
17 United States financial system or the economy
18 of the United States”.

19 (2) Section 4(k)(6) of the Bank Holding Com-
20 pany Act of 1956 is amended by striking subpara-
21 graph (B) and inserting the following new subpara-
22 graph:

23 “(B) A financial holding company may
24 commence any activity or acquire any company,
25 pursuant to paragraph (4) or any regulation

1 prescribed or order issued under paragraph (5),
2 without prior approval of the Board, except—

3 “(i) for a transaction in which the
4 total assets to be acquired by the financial
5 holding company exceed \$25 billion; and

6 “(ii) as provided in subsection (j) with
7 regard to the acquisition of a savings asso-
8 ciation.”.

9 (3) Section 4(j) of the Bank Holding Company
10 Act of 1956 is amended by inserting after paragraph
11 (4) the following new paragraph (and redesignating
12 succeeding paragraphs accordingly):

13 “(5) FINANCIAL STABILITY.—

14 “(A) IN GENERAL.—In every case, the
15 Board shall take into consideration the extent
16 to which the proposed acquisition, merger, or
17 consolidation may pose risk to the stability of
18 the United States financial system or the econ-
19 omy of the United States, including the result-
20 ing scope, nature, size, scale, concentration, or
21 interconnectedness of activities that are finan-
22 cial in nature.

23 “(B) STANDARDS FOR APPROVAL.—The
24 Board may, in the sole discretion of the Board,
25 disapprove any acquisition, merger, or consoli-

1 dation of, or by, a financial holding company
 2 subject to stricter standards if the Board deter-
 3 mines that the resulting concentration of liabil-
 4 ities on a consolidated basis is likely to pose a
 5 great threat to financial stability during times
 6 of severe economic distress.”.

7 (c) BANK MERGER ACT TRANSACTIONS.—Section
 8 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C.
 9 1828(c)) is amended by—

10 (1) in paragraph (5), by striking “and” before
 11 “the convenience and needs of the community to be
 12 served”;

13 (2) in paragraph (5), by inserting before the pe-
 14 riod at the end the following: “, and the risk to the
 15 stability of the United States financial system and
 16 the economy of the United States based on, among
 17 other things, the scope, nature, size, scale, con-
 18 centration, or interconnectedness of activities that
 19 are financial in nature”; and

20 (3) in paragraph (7)(B), by inserting “subpara-
 21 graphs (A) and (B) of” before “paragraph”.

22 **SEC. 1314. ELIMINATION OF ELECTIVE INVESTMENT BANK**
 23 **HOLDING COMPANY FRAMEWORK.**

24 Section 17 of the Securities Exchange Act of 1934
 25 (15 U.S.C. 78q) is amended—

1 (1) by striking subsection (i); and

2 (2) by redesignating subsections (j) and (k) as
3 subsections (i) and (j), respectively.

4 **SEC. 1315. EXAMINATION FEES FOR LARGE BANK HOLDING**
5 **COMPANIES.**

6 The Bank Holding Company Act of 1956 is amended
7 by inserting after section 5 the following new section:

8 **“SEC. 5A. EXAMINATION FEES.**

9 “The Board of Governors of the Federal Reserve Sys-
10 tem or the Federal Reserve Banks shall assess fees on
11 bank holding companies with total consolidated assets of
12 \$10 billion or more. Such fees shall be sufficient to defray
13 the cost of the examination of such bank holding compa-
14 nies.”.

15 **SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MU-**
16 **TUAL BANK HOLDING COMPANIES AUTHOR-**
17 **IZED.**

18 (a) IN GENERAL.—Chapter one of title LXII of the
19 Revised Statutes of the United States (12 U.S.C. 21 et
20 seq.) is amended by inserting after section 5133 the fol-
21 lowing new sections:

22 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

23 “(a) IN GENERAL.—Notwithstanding the section des-
24 ignated the ‘Third’ of section 5134, in order to provide
25 mutual institutions for the deposit of funds, the extension

1 of credit, and provision of other services, the Comptroller
2 of the Currency may charter mutual national banks either
3 de novo or through a conversion of any insured depository
4 institution or any State mutual bank or credit union, sub-
5 ject to regulations prescribed by the Comptroller of the
6 Currency in accordance with this section. The powers con-
7 ferred by this section are intended to provide for the cre-
8 ation and maintenance of mutual national banks as bodies
9 corporate existing in perpetuity for the benefit of their de-
10 positors and the communities in which they operate.

11 “(b) REGULATIONS.—

12 “(1) REGULATIONS OF THE COMPTROLLER.—

13 The Comptroller of the Currency is authorized to
14 prescribe appropriate regulations for the organiza-
15 tion, incorporation, examination, operation, and reg-
16 ulation of mutual national banks. Except to the ex-
17 tent that such existing regulations conflict with sec-
18 tions 5133A and 5133B, mutual national banks
19 shall be subject to the regulations of the Director of
20 the Office of Thrift Supervision governing corporate
21 organization, governance, and conversion of mutual
22 institutions, as in effect on the date of the enact-
23 ment of the Wall Street Reform and Consumer Pro-
24 tection Act of 2009, including parts 543, 544, 546,
25 563b, and 563c of chapter V of title 12, Code of

1 Federal Regulations (as in effect on that date), for
2 up to 3 years beginning on the date of the enact-
3 ment of the Wall Street Reform and Consumer Pro-
4 tection Act of 2009.

5 “(2) APPLICABILITY OF CAPITAL STOCK RE-
6 QUIREMENTS.—The Comptroller of the Currency
7 shall prescribe regulations regarding the manner in
8 which requirements of this title with respect to cap-
9 ital stock, and limitations imposed on national banks
10 under this title based on capital stock, shall apply to
11 mutual national banks.

12 “(c) CONVERSIONS.—

13 “(1) CONVERSION OF A MUTUAL DEPOSITORY
14 TO A MUTUAL NATIONAL BANK.—Subject to such
15 regulations as the Comptroller of the Currency may
16 prescribe for the protection of depositors’ rights and
17 for any other purpose the Comptroller of the Cur-
18 rency may consider appropriate, any mutual deposi-
19 tory may convert to a mutual national bank by filing
20 with the Comptroller of the Currency a notice of its
21 election to convert on a specified date that is not
22 earlier than 30 days after the date on which the no-
23 tice is filed, and the mutual depository shall be con-
24 verted to a mutual national bank charter on the date
25 specified in the notice.

1 “(2) CONVERSION TO STOCK NATIONAL
2 BANK.—Subject to such regulations as the Comp-
3 troller of the Currency may prescribe for the protec-
4 tion of depositors’ rights and for any other purpose
5 the Comptroller of the Currency may consider ap-
6 propriate, any national bank that is organized in the
7 mutual form under subsection (a) may reorganize as
8 a stock national bank.

9 “(3) CONVERSION TO STATE BANKS.—Any na-
10 tional mutual bank may convert to a State bank
11 charter in accordance with regulations prescribed by
12 the Comptroller of the Currency and applicable
13 State law.

14 “(d) TERMINATING MUTUALITY.—If a mutual na-
15 tional bank elects to terminate mutuality, it must do so
16 by—

17 “(1) liquidating; or

18 “(2) converting to a national banking associa-
19 tion operating in stock form.

20 “(e) STATUS AND RIGHTS OF MEMBERS.—

21 “(1) In general, the status of a member is pri-
22 marily that of a depositor and secondarily that of a
23 holder of a contingent right to participate in the eq-
24 uity of a mutual national bank upon a liquidation or
25 conversion.

1 “(2) Each member of a mutual national bank
2 shall have the following rights:

3 “(A) Such rights as may be agreed upon,
4 by contract, between the member and the mu-
5 tual national bank.

6 “(B) The right to vote for members of the
7 board of directors of the mutual national bank.

8 “(C) The right to attend any meeting of
9 members properly called by the board of direc-
10 tors of a mutual national bank.

11 “(D) In the event the board of directors,
12 in its sole discretion, determines a conversion of
13 a mutual national bank to a national banking
14 association operating in stock form is in the
15 best interests of the community in which the
16 bank operates and the members approve the
17 conversion through a special proxy, then the
18 members as of a record date set by the board
19 of directors shall have the first right to sub-
20 scribe for and purchase stock in the converted
21 bank.

22 “(E) In the event the board of directors, in
23 its sole discretion, determines a liquidation of
24 the mutual national bank is in the best inter-
25 ests of the community in which the bank oper-

1 ates and the members approve the liquidation,
2 or if for any other reason the bank is liquidated
3 by operation of law, then the members as of the
4 date of liquidation shall have the right to have
5 credited to their accounts, on a pro rata basis,
6 any residual assets left after the liquidation of
7 the mutual national bank.

8 “(3) In the consideration of all questions re-
9 quiring action by the members of a national mutual
10 bank, the bank may provide in its charter that each
11 member shall be permitted (i) one vote per member,
12 or (ii) to cast one vote for each \$100, or fraction
13 thereof, of the withdrawal value of the member’s ac-
14 count, but not more than 1,000 votes per member.

15 “(f) PROXIES.—

16 “(1) A member may give, in writing or elec-
17 tronically, a perpetual proxy to a committee of the
18 board of directors of a mutual depository, provided
19 that the member may revoke such a proxy in writing
20 or electronically, with such revocation to take effect
21 after 6 business days.

22 “(2) Such proxies may be used to vote on any
23 issue requiring approval of the members, including
24 the conversion of a mutual depository into a mutual
25 national bank and the reorganization of a mutual

1 national bank into a Federal mutual bank holding
2 company, except that, without a prior finding by the
3 regulator of the mutual national bank that such ac-
4 tion is needed to avoid loss to the Federal Deposit
5 Insurance Corporation's deposit insurance fund or to
6 protect the stability of the United States financial
7 system, such proxies may not be used to vote in
8 favor of—

9 “(A) terminating mutuality for a mutual
10 national bank or a Federal mutual bank holding
11 company;

12 “(B) permitting the modification of a Fed-
13 eral mutual bank holding company; or

14 “(C) issuing mutual capital certificates
15 (except when used to found a mutual national
16 bank or a Federal mutual bank holding com-
17 pany de novo).

18 “(3) Proxies given by a member, in writing or
19 electronically, to management of, or to a committee
20 of the board of directors of, a mutual depository
21 shall not be deemed to have been revoked solely be-
22 cause of, and shall continue to exist following, a con-
23 version to a mutual national bank and any concur-
24 rent or subsequent reorganization to a Federal mu-
25 tual bank holding company.

1 “(g) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:

3 “(1) INSURED DEPOSITORY INSTITUTION.—The
4 term ‘insured depository institution’ has the same
5 meaning as in section 3 of the Federal Deposit In-
6 surance Act.

7 “(2) MUTUAL NATIONAL BANK.—The term
8 ‘mutual national bank’ means a national banking as-
9 sociation that operates in mutual form and is char-
10 tered by the Comptroller of the Currency under this
11 section.

12 “(3) MUTUAL DEPOSITORY.—The term ‘mutual
13 depository’ means a depository institution that is or-
14 ganized in non-stock form, including a Federal non-
15 stock depository and any form of non-stock deposi-
16 tory provided for under State law, the deposits of
17 which are insured by an instrumentality of the Fed-
18 eral Government.

19 “(4) MUTUALITY.—The term ‘mutuality’ means
20 the quality of being an insured depository institution
21 organized under a Federal or State law providing for
22 the organization of non-stock depository institutions,
23 or a holding company organized under a Federal or
24 State law providing for the organization of non-stock

1 entities that control one or more depository institu-
2 tions.

3 “(5) MEMBER.—The term ‘member’ means
4 each tax-liable depositor in a mutual depository’s
5 savings, demand, or other authorized depository ac-
6 counts and each tax-liable depositor in such an ac-
7 count in a depository subsidiary of a Federal mutual
8 bank holding company.

9 “(6) TAX LIABLE DEPOSITOR.—The term ‘tax
10 liable depositor’ means the single person responsible
11 for paying any Federal taxes due on any interest
12 paid on any deposits held within any savings, de-
13 mand, or other authorized depository account or ac-
14 counts with any mutual depository.

15 “(7) MEMBERSHIP RIGHTS.—The term ‘mem-
16 bership rights’ means the rights of each member
17 under this section.

18 “(h) CONFORMING REFERENCES.—Unless otherwise
19 provided by the Comptroller of the Currency—

20 “(1) any reference in any Federal law to a na-
21 tional bank operating in stock form, including a ref-
22 erence to the term ‘national banking association’,
23 ‘member bank’, ‘national bank’, ‘national associa-
24 tion’, ‘bank’, ‘insured bank’, ‘insured depository in-

stitution’, or ‘depository institution’, shall be deemed
to refer also to a mutual national bank;

“(2) any reference in any Federal law to the
term ‘board of directors’, ‘director’, or ‘directors’ of
a national bank operating in stock form shall be
deemed to refer also to the board of a mutual na-
tional bank; and

“(3) any terms in Federal law that may apply
only to a national bank operating in stock form, in-
cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
‘capital stock’, ‘common stock’, ‘stock certificate’,
‘stock certificates’, ‘certificates representing shares
of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
class of stock’, ‘cumulate such shares’, ‘par value’,
‘preferred stock’ shall not apply to a mutual national
bank, unless the Comptroller of the Currency deter-
mines that the context requires otherwise.

“SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

“(a) REORGANIZATION OF MUTUAL NATIONAL BANK
AS A HOLDING COMPANY.—

“(1) IN GENERAL.—Subject to approval under
the Bank Holding Company Act of 1956, a mutual
national bank may reorganize so as to become a
Federal mutual bank holding company by submitting

1 a reorganization plan to the appropriate bank hold-
2 ing company regulator.

3 “(2) PLAN APPROVAL.—Upon the approval of
4 the reorganization plan by the appropriate bank
5 holding company regulator and the issuance of the
6 appropriate charters—

7 “(A) the substantial part of the mutual na-
8 tional bank’s assets and liabilities, including all
9 of the bank’s insured liabilities, shall be trans-
10 ferred to a national banking association, a ma-
11 jority of the shares of voting stock of which is
12 owned, directly or indirectly, by the mutual na-
13 tional bank that is to become a Federal mutual
14 bank holding company; and

15 “(B) the mutual national bank shall be-
16 come a Federal mutual bank holding company.

17 “(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’
18 APPROVAL OF PLAN REQUIRED.—This subsection does
19 not authorize a reorganization unless—

20 “(1) a majority of the mutual national bank’s
21 board of directors has approved the plan providing
22 for such reorganization; and

23 “(2) a majority of members has approved the
24 plan at a meeting held at the call of the directors

1 under the procedures prescribed by the bank’s char-
2 ter and bylaws.

3 “(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—

4 To avoid terminating mutuality, a Federal mutual bank
5 holding company must own, directly or indirectly, a major-
6 ity of the shares of voting stock of each of its depository
7 subsidiaries.

8 “(d) NO TERMINATION OF MUTUALITY.—Neither a

9 reorganization of a mutual depository nor a modification
10 of a Federal mutual bank holding company shall cause a
11 termination of mutuality.

12 “(e) RETENTION OF CAPITAL.—In connection with a

13 transaction described in subsection (a), a mutual national
14 bank may, subject to the approval of the appropriate bank
15 holding company regulator, retain capital at the holding
16 company level to the extent that the capital retained at
17 the holding company level exceeds the amount of capital
18 required for the national banking association chartered as
19 a part of a transaction described in subsection (a) to meet
20 all relevant capital standards established by the Comp-
21 troller of the Currency for national banking associations.

22 “(f) TERMINATING MUTUALITY.—If a Federal mu-

23 tual bank holding company elects to terminate mutuality,
24 it must do so by either liquidating or converting to a bank
25 holding company operating in stock form.

1 “(g) MEMBERSHIP RIGHTS.—Holders of savings, de-
2 mand, or other authorized depository accounts in a deposi-
3 tory subsidiary of a Federal mutual bank holding company
4 shall have the same membership rights with respect to the
5 Federal mutual bank holding company as those holders
6 would have had if the depository subsidiary of the Federal
7 mutual bank holding company had been a mutual national
8 bank.

9 “(h) REGULATION.—A Federal mutual bank holding
10 company shall be—

11 “(1) chartered by the appropriate bank holding
12 company regulator and shall be subject to such regu-
13 lations as the appropriate bank holding company
14 regulator shall prescribe; and

15 “(2) regulated under the Bank Holding Com-
16 pany Act of 1956 on the same terms and subject to
17 the same limitations as any other company that con-
18 trols a bank.

19 “(i) CAPITAL IMPROVEMENT.—

20 “(1) PLEDGE OF STOCK OF NATIONAL BANK
21 SUBSIDIARY.—This section shall not prohibit a Fed-
22 eral mutual bank holding company from pledging all
23 or a portion of the stock of the national banking as-
24 sociation chartered as part of a transaction de-

scribed in subsection (a) to raise capital for such national banking association.

“(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares or less than 50 percent of the voting shares of such bank to any person other than the Federal mutual bank holding company.

“(j) INSOLVENCY AND LIQUIDATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the appropriate bank holding company regulator may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

“(A) the default of any national bank—

“(i) the stock of which is owned by the Federal mutual bank holding company; and

“(ii) that was chartered in a transaction described in subsection (a); or

“(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (i)(1).

1 “(2) DISTRIBUTION OF NET PROCEEDS.—Ex-
2 cept as provided in paragraph (3), the net proceeds
3 of any liquidation of any Federal mutual bank hold-
4 ing company under paragraph (1) shall be trans-
5 ferred to persons who hold membership interests in
6 such Federal mutual bank holding company.

7 “(3) RECOVERY BY FDIC.—If the Federal De-
8 posit Insurance Corporation incurs a loss as a result
9 of the default of any insured bank subsidiary of a
10 Federal mutual bank holding company that is liq-
11 uidated under paragraph (1), the Federal Deposit
12 Insurance Corporation shall succeed to the interests
13 of the depositors of the bank as members in the
14 Federal mutual bank holding company, to the extent
15 of the Federal Deposit Insurance Corporation’s loss.

16 “(k) DEFINITIONS.—

17 “(1) FEDERAL MUTUAL BANK HOLDING COM-
18 PANY.—The term ‘Federal mutual bank holding
19 company’ means a holding company that is orga-
20 nized in mutual form and owns, directly or indi-
21 rectly, a majority of the shares of voting stock of
22 one or more depository subsidiaries of a Federal mu-
23 tual bank holding company.

24 “(2) DEPOSITORY SUBSIDIARY OF A FEDERAL
25 MUTUAL BANK HOLDING COMPANY.—The term ‘de-

1 pository subsidiary of a Federal mutual bank hold-
2 ing company’ means a depository institution orga-
3 nized in stock form that is insured by the Federal
4 Deposit Insurance Corporation, the majority of the
5 shares of voting stock of which are owned by the
6 Federal mutual bank holding company or its wholly
7 owned subsidiaries and none of the shares of stock
8 of which are pledged or otherwise subjected to lien
9 except as permitted in subsection (i).

10 “(3) REORGANIZATION OF A MUTUAL DEPOSI-
11 TORY.—The term ‘reorganization of a mutual depos-
12 itory’ means the conversion of a mutual depository
13 into a depository subsidiary of a Federal mutual
14 bank holding company.

15 “(4) MODIFICATION OF A FEDERAL MUTUAL
16 BANK HOLDING COMPANY.—The term ‘modification
17 of a Federal mutual bank holding company’ means
18 either: (A) the sale of shares of common or preferred
19 stock in a depository subsidiary of a Federal mutual
20 bank holding company to any party other than the
21 subsidiary’s parent Federal mutual bank holding
22 company or a wholly owned subsidiary of that par-
23 ent; or (B) the voluntary grant of a lien on shares
24 of common or preferred stock in a depository sub-
25 sidiary of a Federal mutual bank holding company.

1 “(5) DEFAULT.—With respect to a national
2 bank, the term ‘default’ means an adjudication or
3 other official determination by any court of com-
4 petent jurisdiction, the Comptroller of the Currency,
5 or other public authority pursuant to which a con-
6 servator, receiver, or other legal custodian is ap-
7 pointed for the national bank.

8 “(1) CONFORMING REFERENCES.—Unless otherwise
9 provided by the appropriate bank holding company regu-
10 lator—

11 “(1) any reference in any Federal law to a bank
12 holding company operating in stock form shall be
13 deemed to refer also to a Federal mutual bank hold-
14 ing company;

15 “(2) any reference in any Federal law to the
16 term ‘board of directors’, ‘director’, or ‘directors’ of
17 a national bank operating in stock form shall be
18 deemed to refer also to the board of a Federal mu-
19 tual bank holding company; and

20 “(3) any terms in Federal law that may apply
21 only to a national bank operating in stock form, in-
22 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
23 ‘capital stock’, ‘common stock’, ‘stock certificate’,
24 ‘stock certificates’, ‘certificates representing shares
25 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each

1 class of stock’, ‘cumulate such shares’, ‘par value’,
2 ‘preferred stock’ shall not apply to a Federal mutual
3 bank holding company, unless the appropriate bank
4 holding company regulator determines that the con-
5 text requires otherwise.”.

6 (b) LIMITATION ON FEDERAL REGULATION OF
7 STATE BANKS.—Except as otherwise provided in Federal
8 law, the Comptroller of the Currency, the Board of Gov-
9 ernors of the Federal Reserve System, and the Federal
10 Deposit Insurance Corporation may not adopt or enforce
11 any regulation that contravenes the corporate governance
12 rules prescribed by State law or regulation for State banks
13 unless the Director, Board, or Corporation finds that the
14 Federal regulation is necessary to assure the safety and
15 soundness of the State banks.

16 (c) TECHNICAL AMENDMENT.—The table of sections
17 for chapter one of title LXII of the Revised Statutes of
18 the United States (12 U.S.C. 21 et seq.) is amended by
19 inserting after the item relating to section 5133 the fol-
20 lowing new items:

“5133A. Mutual national banks.

“5133B. Federal mutual bank holding companies.”.

21 (d) APPROPRIATE FEDERAL BANKING AGENCY FOR
22 FEDERAL MUTUAL BANK HOLDING COMPANIES.—Sec-
23 tion 3(q)(1) of the Federal Deposit Insurance Act (12

1 U.S.C. 1813(q)(2)) is amended by inserting after subpara-
2 graph (F) the following new subparagraph:

3 “(G) supervisory or regulatory proceedings
4 arising from the authority given to the appro-
5 priate bank holding company regulator under
6 section 5133B of the Revised Statutes of the
7 United States.”.

8 (e) MUTUAL HOLDING COMPANY CONVERSION.—

9 (1) IN GENERAL.—Any mutual holding com-
10 pany, including any form of mutual depository hold-
11 ing company provided for under State law, may con-
12 vert to a Federal mutual bank holding company by
13 filing with the appropriate bank holding company
14 regulator a notice of its election to convert on a
15 specified date that is not earlier than 30 days after
16 the date on which the notice is filed, and the mutual
17 holding company shall be converted to a Federal mu-
18 tual holding company charter on the date specified
19 in the notice.

20 (2) DEFINITIONS.—For purposes of this sub-
21 section, the following definitions shall apply:

22 (A) FEDERAL MUTUAL BANK HOLDING
23 COMPANY.—The term “Federal mutual bank
24 holding company” has the same meaning as in

1 section 5133B of the Revised Statutes of the
2 United States (as added by this section); and

3 (B) MUTUAL HOLDING COMPANY.—The
4 term “mutual holding company” has the same
5 meaning as in section 10(o)(10)(A) of the
6 Home Owners Loan Act as in effect on the day
7 before the date of enactment of this Act.

8 (f) EFFECTIVE DATE.—This section shall take effect
9 on the date of enactment of this Act.

10 **SEC. 1317. NATIONWIDE DEPOSIT CAP FOR INTERSTATE AC-**
11 **QUISITIONS.**

12 (a) AMENDMENTS TO THE BANK HOLDING COMPANY
13 ACT OF 1956.—

14 (1) CONCENTRATION LIMIT FOR BANK HOLDING
15 COMPANIES.—Section 3(d)(2)(A) of the Bank Hold-
16 ing Company Act (12 U.S.C. 1842(d)(2)(A)) is
17 amended by striking “paragraph (1)(A)” and insert-
18 ing “subsection (a) of this section”.

19 (2) REMOVAL OF NONBANK SAVINGS ASSOCIA-
20 TION PROVISION IN LIGHT OF BEING DEFINED AS A
21 BANK.—Section 4 of the Bank Holding Company
22 Act is amended by striking subsection (i) and insert
23 the following new subsection:
24 “(i) [Repealed.]”.

1 (b) AMENDMENTS TO THE FEDERAL DEPOSIT IN-
2 SURANCE ACT.—

3 (1) IN GENERAL.—Section 18(e) of the Federal
4 Deposit Insurance Act (12 U.S.C. 1828(c)) is
5 amended—

6 (A) by redesignating paragraph (12) as
7 paragraph (13); and

8 (B) by inserting after paragraph (11), the
9 following new paragraph:

10 “(12) NATIONWIDE DEPOSIT CAP.—The respon-
11 sible agency may not approve an application for an
12 interstate merger transaction if the resulting insured
13 depository institution (including all insured deposi-
14 tory institutions which are affiliates of the resulting
15 insured depository institution), upon consummation
16 of the transaction, would control more than 10 per-
17 cent of, the total amount of deposits of insured de-
18 pository institutions in the United States.”.

19 (2) PARALLEL REQUIREMENT.—Section
20 44(b)(2) of the Federal Deposit Insurance Act (12
21 U.S.C. 1831u(b)(2)(A) is amended to read as fol-
22 lows:

23 “(A) NATIONWIDE CONCENTRATION LIM-
24 ITS.—The responsible agency may not approve
25 an application for an interstate merger trans-

1 action involving two or more insured depository
2 institutions if the resulting insured depository
3 institution (including all insured depository in-
4 stitutions which are affiliates of such institu-
5 tion), upon consummation of the transaction
6 would control more than 10 percent of the total
7 amount of deposits of insured depository insti-
8 tutions in the United States.”.

9 (c) AMENDMENTS TO THE HOME OWNERS’ LOAN
10 ACT.—Section 10(e)(2) of the Home Owners’ Loan Act
11 (12 U.S.C. 467a(e)(2)) is amended—

12 (1) by striking “or” at the end of subparagraph
13 (C); and

14 (2) by striking the period at the end of sub-
15 paragraph (D), the following new subparagraph:

16 “(E) in the case of an application involving
17 an interstate acquisition, if the applicant (in-
18 cluding all insured depository institutions which
19 are affiliates of the applicant) controls, or upon
20 consummation of the acquisition for which such
21 application is filed would control, more than 10
22 percent of the total amount of deposits of in-
23 sured depository institutions in the United
24 States.”.

1 **SEC. 1318. DE NOVO BRANCHING INTO STATES.**

2 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
3 Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to
4 read as follows:

5 “(A) the law of the State where the branch
6 is located, or is to be located, would permit es-
7 tablishment of the branch if the national bank
8 were a state bank chartered by such State;”.

9 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
10 of the Federal Deposit Insurance Act (12 U.S.C.
11 1828(d)(4)(A)(i)) is amended to read as follows:

12 “(i) the law of the State where the
13 branch is located, or is to be located, would
14 permit establishment of the branch if the
15 bank were a State bank chartered by such
16 State;”.

17 **Subtitle E—Improvements to the**
18 **Federal Deposit Insurance Fund**

19 **SEC. 1401. ACCOUNTING FOR ACTUAL RISK TO THE DE-**
20 **POSIT INSURANCE FUND.**

21 (a) Section 7(b)(1)(C) of the Federal Deposit Insur-
22 ance Act is amended to read as follows:

23 “(C) ‘RISK-BASED ASSESSMENT SYSTEM’
24 DEFINED.—For purposes of this paragraph, the
25 term ‘risk-based assessment system’ means a

1 system for calculating a depository institution's
2 assessment based on—

3 “(i) the probability that the Deposit
4 Insurance Fund will incur a loss with re-
5 spect to the institution;

6 “(ii) the likely amount of any such
7 loss;

8 “(iii) the risks to the Deposit Insur-
9 ance Fund attributable to such depository
10 institution, including risks posed by its af-
11 filiates to the extent the Corporation deter-
12 mines appropriate, taking into account—

13 “(I) the amount, different cat-
14 egories, and concentrations of assets
15 of the insured depository institution
16 and its affiliates, including both on-
17 balance sheet and off-balance sheet
18 assets;

19 “(II) the amount, different cat-
20 egories, and concentrations of liabil-
21 ities, both insured and uninsured, con-
22 tingent and noncontingent, including
23 both on-balance sheet and off-balance
24 sheet liabilities, of the insured depository
25 institution and its affiliates; and

1 “(III) any other factors the Cor-
2 poration determines are relevant to
3 assessing the risks; and
4 “(iv) the revenue needs of the Deposit
5 Insurance Fund.”.

6 (b) Section 7(b)(2) of the Federal Deposit Insurance
7 Act is amended by striking subparagraph (D) and by re-
8 designating subparagraph (E) as subparagraph (D).

9 **SEC. 1402. CREATING A RISK-FOCUSED ASSESSMENT BASE.**

10 Section 7(b)(2) of such Act, as amended, is further
11 amended by amending subparagraph (C) to read as fol-
12 lows:

13 “(C) ASSESSMENT.—The assessment of
14 any insured depository institution imposed
15 under this subsection shall be an amount equal
16 to the product of—

17 “(i) an assessment rate established by
18 the Corporation; and

19 “(ii) the amount of the insured depos-
20 itory institution’s average total assets dur-
21 ing the assessment period minus the
22 amount of the insured depository institu-
23 tion’s average tangible equity during the
24 assessment period, minus additional deduc-
25 tions or adjustments necessary to establish

1 assessments consistent with the definition
2 under section 7(b)(1)(C) of the Federal
3 Deposit Insurance Act for custodial banks
4 (as defined by the Corporation based on
5 factors including percentage of total reve-
6 nues generated by custodial businesses and
7 the level of assets under custody) or a
8 bankers' bank (as referred to in section
9 5136 of the Revised Statutes of the United
10 States).”.

11 **SEC. 1403. ELIMINATION OF PROCYCLICAL ASSESSMENTS.**

12 Section 7(e) of the Federal Deposit Insurance Act is
13 amended—

14 (1) in paragraph (2)—

15 (A) by amending subparagraph (B) to read
16 as follows:

17 “(B) LIMITATION.—The Board of Direc-
18 tors may, in its sole discretion, suspend or limit
19 the declaration of payment of dividends under
20 subparagraph (A).”;

21 (B) by amending subparagraph (C) to read
22 as follows:

23 “(C) NOTICE AND OPPORTUNITY FOR COM-
24 MENT.—The Corporation shall prescribe, by
25 regulation, after notice and opportunity for

1 comment, the method for the declaration, cal-
 2 culation, distribution, and payment of dividends
 3 under this paragraph”; and

4 (C) by striking subparagraphs (D) through
 5 (G); and

6 (2) in paragraph (4)(A) by striking “para-
 7 graphs (2)(D) and” and inserting “paragraphs (2)
 8 and”.

9 **SEC. 1404. ENHANCED ACCESS TO INFORMATION FOR DE-**
 10 **POSIT INSURANCE PURPOSES.**

11 (a) Section 7(a)(2)(B) of the Federal Deposit Insur-
 12 ance Act is amended by striking “, after agreement with
 13 the Comptroller of the Currency, the Board of Governors
 14 of the Federal Reserve System, and the Director of the
 15 Office of Thrift Supervision, as appropriate,”.

16 (b) Section 7(b)(1)(E) of the Federal Deposit Insur-
 17 ance Act is amended—

18 (1) in clause (i), by striking “such as” and in-
 19 serting “including”; and

20 (2) by striking clause (iii).

21 **SEC. 1405. TRANSITION RESERVE RATIO REQUIREMENTS**
 22 **TO REFLECT NEW ASSESSMENT BASE.**

23 (a) Section 7(b)(3)(B) of the Federal Deposit Insur-
 24 ance Act is amended to read as follows:

1 “(B) MINIMUM RESERVE RATIO.—The re-
2 serve ratio designated by the Board of Direc-
3 tors for any year may not be less than 1.15 per-
4 cent of estimated insured deposits, or the com-
5 parable percentage of the assessment base set
6 forth in paragraph (2)(C).”.

7 (b) Section 3(y)(3) of the Federal Deposit Insurance
8 Act is amended by inserting “, or such comparable per-
9 centage of the assessment base set forth in section
10 7(b)(2)(C)” before the period.

11 (c) For a period of not less than 5 years after the
12 date of the enactment of this title, the Federal Deposit
13 Insurance Corporation shall make available to the public
14 the reserve ratio and the designated reserve ratio using
15 both estimated insured deposits and the assessment base
16 under section 7(b)(2)(C) of the Federal Deposit Insurance
17 Act.

18 **Subtitle F—Improvements to the**
19 **Asset-backed Securitization**
20 **Process**

21 **SEC. 1501. SHORT TITLE.**

22 This subtitle may be cited as the “Credit Risk Reten-
23 tion Act of 2009”.

1 **SEC. 1502. CREDIT RISK RETENTION.**

2 (a) AMENDMENT.—The Securities Act of 1933 (15
3 U.S.C. 77a et seq.) is amended by inserting after section
4 28 the following new section:

5 **“SEC. 29. CREDIT RISK RETENTION.**

6 “(a) IN GENERAL.—

7 “(1) INTEREST IN LOANS MADE BY CREDI-
8 TORS.—Within 180 days of the date of the enact-
9 ment of this section, the appropriate agencies shall
10 prescribe regulations to require any creditor that
11 makes a loan to retain an economic interest in a ma-
12 terial portion of the credit risk of any such loan that
13 the creditor transfers, sells, or conveys to a third
14 party, including for the purpose of including such
15 loan in a pool of loans backing an issuance of asset-
16 backed securities.

17 “(2) INTEREST IN ASSETS BACKING ASSET-
18 BACKED SECURITIES.—The appropriate agencies
19 shall prescribe regulations to require any securitizer
20 of asset-backed securities that are backed by assets
21 not described in paragraph (1) to retain an economic
22 interest in a material portion of any such asset used
23 to back an issuance of securities.

24 “(b) ALTERNATIVE RISK RETENTION FOR CREDIT
25 SECURITIZERS.—The appropriate agencies may apply the
26 risk retention requirements of this section to securitizers

1 of loans or particular types of loans in addition to or in
2 substitution for any or all of the requirements that apply
3 to creditors that make such loans or types of loans, if the
4 agencies determine that applying the requirements to such
5 securitizers would—

6 “(1) be consistent with helping to ensure high
7 quality underwriting standards for creditors, taking
8 into account other applicable laws, regulations, and
9 standards; and

10 “(2) facilitate appropriate risk management
11 practices by such creditors, improve access of con-
12 sumers to credit on reasonable terms, or otherwise
13 serve the public interest.

14 “(c) STANDARDS FOR REGULATION.—Regulations
15 prescribed under subsections (a) and (b) shall—

16 “(1) prohibit a creditor or securitizer from di-
17 rectly or indirectly hedging or otherwise transferring
18 the credit risk such creditor or securitizer is required
19 to retain under the regulations;

20 “(2) require a creditor or securitizer to retain
21 5 percent of the credit risk on any loan that is
22 transferred, sold, or conveyed by such creditor or
23 securitized by such securitizer except—

24 “(A) an appropriate agency may specify
25 that the percentage of risk may be less than 5

1 percent of the credit risk, or exempt such cred-
2 itor or securitizer from the risk retention re-
3 quirement, if—

4 “(i) the credit underwriting by the
5 creditor or the due diligence by the
6 securitizer meets such standards as an ap-
7 propriate agency prescribes; and

8 “(ii) the loan that is transferred, sold,
9 or conveyed by such creditor or securitized
10 by such securitizer meets terms, condi-
11 tions, and characteristics that are deter-
12 mined by an appropriate agency to reflect
13 loans with reduced credit risk, such as
14 loans that meet certain interest rate
15 thresholds, loans that are fully amortizing,
16 and loans that are included in a
17 securitization in which a third-party pur-
18 chaser specifically negotiates for the pur-
19 chase of the first-loss position and provides
20 due diligence on all individual loans in the
21 pool prior to the issuance of the asset-
22 backed securities, and retains a first-loss
23 position; and

24 “(B) an appropriate agency may specify
25 that the percentage of risk may be more than

1 5 percent of the credit risk if the underwriting
2 by the creditor or due diligence by the
3 securitizer is insufficient;

4 “(3) specify that the credit risk retained must
5 be no less at risk for loss than the average of the
6 credit risk not so retained; and

7 “(4) set the minimum duration of the required
8 risk retention.

9 “(d) EXEMPTIONS AND ADJUSTMENTS.—

10 “(1) IN GENERAL.—The appropriate agencies
11 shall have authority to provide exemptions or adjust-
12 ments to the requirements of this section, including
13 exemptions or adjustments relating to the percent-
14 age of risk retention required to be held and the
15 hedging prohibition.

16 “(2) APPLICABLE STANDARDS.—Any exemp-
17 tions or adjustments provided under paragraph (1)
18 shall—

19 “(A) be consistent with the purpose of en-
20 suring high quality underwriting standards for
21 creditors, taking into account other applicable
22 laws, regulations, or standards; and

23 “(B) facilitate appropriate risk manage-
24 ment practices by such creditors, improve ac-

1 cess for consumers to credit on reasonable
2 terms, or otherwise serve the public interest.

3 “(e) APPROPRIATE AGENCY DEFINED.—For pur-
4 poses of this section, the term ‘appropriate agency’ means
5 any of the following agencies with regard to the respective
6 loans and asset-backed securities:

7 “(1) BANKING AGENCIES.—The Federal bank-
8 ing agencies, the National Credit Union Administra-
9 tion Board, and the Commission, with respect to any
10 loan or asset-backed security for which there is no
11 appropriate agency under paragraph (2).

12 “(2) OTHER AGENCIES.—

13 “(A) With regard to any mortgage insured
14 under title II of the National Housing Act, the
15 Secretary of Housing and Urban Development.

16 “(B) With regard to any loan meeting the
17 conforming loan standards of the Federal Na-
18 tional Mortgage Corporation or the Federal
19 Home Loan Mortgage Corporation or any
20 asset-backed security issued by either such cor-
21 poration, the Federal Housing Finance Agency.

22 “(C) With regard to any loan insured by
23 the Rural Housing Service, the Rural Housing
24 Service.

1 “(f) JOINT APPROPRIATE AGENCY REGULATIONS.—

2 All regulations prescribed by the agencies identified in
3 subsection (e)(1) shall be prescribed jointly by such agen-
4 cies.

5 “(g) ENFORCEMENT.—

6 “(1) Compliance with the requirements imposed
7 under this section shall be enforced under—

8 “(A) section 8 of the Federal Deposit In-
9 surance Act (12 U.S.C. 1818), in the case of—

10 “(i) national banks, and Federal
11 branches and Federal agencies of foreign
12 banks, by the Office of the Comptroller of
13 the Currency;

14 “(ii) member banks of the Federal
15 Reserve System (other than national
16 banks), branches and agencies of foreign
17 banks (other than Federal branches, Fed-
18 eral agencies, and insured State branches
19 of foreign banks), commercial lending com-
20 panies owned or controlled by foreign
21 banks, and organizations operating under
22 section 25 or 25A of the Federal Reserve
23 Act, bank holding companies, and subsidi-
24 aries of bank holding companies (other

1 than insured depository institutions), by
2 the Board; and

3 “(iii) banks insured by the Federal
4 Deposit Insurance Corporation (other than
5 members of the Federal Reserve System)
6 and insured State branches of foreign
7 banks, by the Board of Directors of the
8 Federal Deposit Insurance Corporation;

9 “(B) section 8 of the Federal Deposit In-
10 surance Act (12 U.S.C. 1818), by the Director
11 of the Office of Thrift Supervision, in the case
12 of a savings association the deposits of which
13 are insured by the Federal Deposit Insurance
14 Corporation and a savings and loan holding
15 company and to any subsidiary (other than a
16 bank or subsidiary of that bank); and

17 “(C) the Federal Credit Union Act (12
18 U.S.C. 1751 et seq.), by the National Credit
19 Union Administration Board with respect to
20 any Federal credit union.

21 “(2) Except to the extent that enforcement of
22 the requirements imposed under this section is spe-
23 cifically committed to some other Federal agency
24 under paragraph (1), the Commission shall enforce
25 such requirements.

1 “(3) The authority of the Commission under
2 this section shall be in addition to its existing au-
3 thority to enforce the securities laws.

4 “(h) EXCLUSIONS.—Notwithstanding any other pro-
5 vision of this section, the requirements of this section shall
6 not apply to any loan—

7 “(1) insured, guaranteed, or administered by
8 the Secretary of Education, the Secretary of Agri-
9 culture, the Secretary of Veterans Affairs, or the
10 Small Business Administration; or

11 “(2) made, insured, guaranteed, or purchased
12 by any person that is subject to the supervision of
13 the Farm Credit Administration, including the Fed-
14 eral Agricultural Mortgage Corporation.

15 “(i) DEFINITIONS.—For purposes of this section:

16 “(1) The term ‘asset-backed security’ has the
17 meaning given such term in section 229.1101(c) of
18 title 17, Code of Federal Regulations, or any suc-
19 cessor thereto.

20 “(2) The term ‘Federal banking agencies’
21 means the Board of Governors of the Federal Re-
22 serve System, the Office of the Comptroller of the
23 Currency, the Office of Thrift Supervision, and the
24 Federal Deposit Insurance Corporation.

1 “(3) The term ‘insured depository institution’
2 has the meaning given such term in section 3(e) of
3 the Federal Deposit Insurance Act (12 U.S.C.
4 1813(e)).

5 “(4) The term ‘securitization vehicle’ means a
6 trust, corporation, partnership, limited liability enti-
7 ty, special purpose entity, or other structure that—

8 “(A) is the issuer, or is created by the
9 issuer, of pass-through certificates, participa-
10 tion certificates, asset-backed securities, or
11 other similar securities backed by a pool of as-
12 sets that includes loans; and

13 “(B) holds such loans.

14 “(5) The term ‘securitizer’ means the person
15 that transfers, conveys, or assigns, or causes the
16 transfer, conveyance, or assignment of, loans, includ-
17 ing through a special purpose vehicle, to any
18 securitization vehicle, excluding any trustee that
19 holds such loans for the benefit of the securitization
20 vehicle.”.

21 (b) STUDY ON RISK RETENTION.—

22 (1) STUDY.—The Board, in coordination and
23 consultation with the Comptroller of the Currency,
24 the Office of Thrift Supervision, the Federal Deposit
25 Insurance Corporation, and the Securities and Ex-

1 change Commission, shall conduct a study of the
2 combined impact by each individual class of asset-
3 backed security of—

4 (A) the new credit risk retention require-
5 ments contained in the amendment made by
6 subsection (a); and

7 (B) the Financial Accounting Statements
8 166 and 167 issued by the Financial Account-
9 ing Standards Board.

10 (2) REPORT.—Not later than 90 days after the
11 date of enactment of this title, the Board shall sub-
12 mit to Congress a report on the study conducted
13 under paragraph (1). Such report shall include stat-
14 utory and regulatory recommendations for elimi-
15 nating any negative impacts on the continued viabil-
16 ity of the asset-backed securitization markets and on
17 the availability of credit for new lending identified
18 by the study conducted under paragraph (1).

19 **SEC. 1503. PERIODIC AND OTHER REPORTING UNDER THE**
20 **SECURITIES EXCHANGE ACT OF 1934 FOR**
21 **ASSET-BACKED SECURITIES.**

22 Section 15(d) of Securities Exchange Act of 1934 (15
23 U.S.C. 78o(d)) is amended—

24 (1) by inserting “, other than securities of any
25 class of asset-backed security (as defined in section

1 229.1101(c) of title 17, Code of Federal Regula-
2 tions, or any successor thereto),” after “securities of
3 each class”;

4 (2) by inserting at the end the following: “The
5 Commission may by rules and regulations provide
6 for the suspension or termination of the duty to file
7 under this subsection for any class of issuer of asset-
8 backed security upon such terms and conditions and
9 for such period or periods as it deems necessary or
10 appropriate in the public interest or for the protec-
11 tion of investors. The Commission may, for the pur-
12 poses of this subsection, classify issuers and pre-
13 scribe requirements appropriate for each class of
14 issuer of asset-backed security.”; and

15 (3) by inserting after the fifth sentence the fol-
16 lowing: “The Commission shall adopt regulations
17 under this subsection requiring each issuer of an
18 asset-backed security to disclose, for each tranche or
19 class of security, information regarding the assets
20 backing that security. In adopting regulations under
21 this subsection, the Commission shall set standards
22 for the format of the data provided by issuers of an
23 asset-backed security, which shall, to the extent fea-
24 sible, facilitate comparison of such data across secu-
25 rities in similar types of asset classes. The Commis-

1 sion shall require issuers of asset-backed securities
2 at a minimum to disclose asset-level or loan-level
3 data necessary for investors to independently per-
4 form due diligence. Asset-level or loan-level data
5 shall include data with unique identifiers relating to
6 loan brokers or originators, the nature and extent of
7 the compensation of the broker or originator of the
8 assets backing the security, and the amount of risk
9 retention of the originator or the securitizer of such
10 assets.”.

11 **SEC. 1504. REPRESENTATIONS AND WARRANTIES IN ASSET-**
12 **BACKED OFFERINGS.**

13 The Commission shall prescribe regulations on the
14 use of representations and warranties in the asset-backed
15 securities market that—

16 (1) require credit rating agencies to include in
17 reports accompanying credit ratings a description of
18 the representations, warranties, and enforcement
19 mechanisms available to investors and how they dif-
20 fer from representations, warranties, and enforce-
21 ment mechanisms in similar issuances; and

22 (2) require disclosure on fulfilled repurchase re-
23 quests across all trusts aggregated by originator, so
24 that investors may identify asset originators with
25 clear underwriting deficiencies.

1 **SEC. 1505. EXEMPTED TRANSACTIONS UNDER THE SECURI-**
2 **TIES ACT OF 1933.**

3 (a) IN GENERAL.—Section 4 of the Securities Act of
4 1933 (15 U.S.C. 77d) is amended—

5 (1) by striking paragraph (5); and

6 (2) by redesignating paragraph (6) as para-
7 graph (5).

8 (b) CONFORMING AMENDMENT.—Section
9 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking
11 “4(6)” and inserting “4(5)”.

12 **SEC. 1506. STUDY ON THE MACROECONOMIC EFFECTS OF**
13 **RISK RETENTION REQUIREMENTS.**

14 (a) STUDY REQUIRED.—The Chairman of the Finan-
15 cial Services Oversight Council shall carry out a study on
16 the macroeconomic effects of the risk retention require-
17 ments under this subtitle, and the amendments made by
18 this subtitle, with emphasis placed on potential beneficial
19 effects with respect to stabilizing the real estate market.
20 Such study shall include—

21 (1) an analysis of the effects of risk retention
22 on real estate asset price bubbles, including a retro-
23 spective estimate of what fraction of real estate
24 losses may have been averted had such requirements
25 been in force in recent years;

1 (2) an analysis of the feasibility of minimizing
2 real estate price bubbles by proactively adjusting the
3 percentage of risk retention that must be borne by
4 creditors and securitizers of real estate debt, as a
5 function of regional or national market conditions;

6 (3) a comparable analysis for proactively ad-
7 justing mortgage origination requirements;

8 (4) an assessment of whether such proactive ad-
9 justments should be made by an independent regu-
10 lator, or in a formulaic and transparent manner;

11 (5) an assessment of whether such adjustments
12 should take place independently or in concert with
13 monetary policy; and

14 (6) recommendations for implementation and
15 enabling legislation.

16 (b) REPORT.—Not later than the end of the 180-day
17 period beginning on the date of the enactment of this title,
18 the Chairman of the Financial Services Oversight Council
19 shall issue a report to the Congress containing any find-
20 ings and determinations made in carrying out the study
21 required under subsection (a).

1 **Subtitle G—Enhanced Dissolution**
2 **Authority**

3 **SEC. 1601. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This subtitle may be cited as the
5 “Dissolution Authority for Large, Interconnected Finan-
6 cial Companies Act of 2009”.

7 (b) PURPOSE.—The purpose of this subtitle is to pro-
8 tect the financial system of the United States in times of
9 severe crisis by providing for the orderly resolution of
10 large, interconnected financial companies whose failure
11 could create, or increase, the risk of significant liquidity,
12 credit, or other financial problems spreading among finan-
13 cial institutions or markets and thereby threaten the sta-
14 bility of the overall financial system of the United States.
15 There shall be a strong presumption that resolution under
16 the bankruptcy laws will remain the primary method of
17 resolving financial companies, and the authorities con-
18 tained in this subtitle will only be used in the most exigent
19 circumstances.

20 **SEC. 1602. DEFINITIONS.**

21 For purposes of this subtitle, the following definitions
22 shall apply:

23 (1) APPROPRIATE REGULATORY AGENCY.—

24 (A) CORPORATION AND COMMISSION.—The
25 term “appropriate regulatory agency” means—

1 (i) the Corporation;

2 (ii) the Commission, if the financial
3 company, or an affiliate thereof, is a
4 broker or dealer registered with the Com-
5 mission under section 15(b) of the Securi-
6 ties Exchange Act of 1934 (15 U.S.C.
7 78o(b) (other than an insured depository
8 institution)); and

9 (iii) if the financial company or an af-
10 filiate of the financial company is an insur-
11 ance company (other than an insured de-
12 pository institution), the applicable State
13 insurance authority of the State in which
14 the insurance company is domiciled.

15 (B) RULES OF CONSTRUCTION.—More
16 than 1 agency may be an appropriate regu-
17 latory agency with respect to any given finan-
18 cial company. In such instances, the Commis-
19 sion shall be the appropriate regulatory agency
20 for purposes of section 1603 if the largest sub-
21 sidiary of the financial company is a broker or
22 dealer as measured by total assets as of the end
23 of the previous calendar quarter, the applicable
24 State insurance authority of the State in which
25 the insurance company is domiciled shall be the

1 appropriate regulatory agency for purposes of
2 section 1603 if the financial company is an in-
3 surance company or if the largest subsidiary of
4 the financial company is an insurance company
5 as measured by total assets as of the end of the
6 previous calendar quarter, and otherwise the
7 Corporation shall be the appropriate regulatory
8 agency for purposes of section 1603.

9 (2) BRIDGE FINANCIAL COMPANY.—The term
10 “bridge financial company” means a new financial
11 company organized in accordance with section
12 1609(h) by the Corporation.

13 (3) COMMISSION.—The term “Commission”
14 means the Securities and Exchange Commission.

15 (4) CORPORATION.—The term “Corporation”
16 means the Federal Deposit Insurance Corporation.

17 (5) COVERED FINANCIAL COMPANY.—The term
18 “covered financial company” means a financial com-
19 pany for which a determination has been made pur-
20 suant to and in accordance with section 1603(b).

21 (6) COVERED SUBSIDIARY.—The term “covered
22 subsidiary” means a subsidiary covered in paragraph
23 (9)(B)(v).

1 (7) CUSTOMER PROPERTY.—The term “cus-
2 tomer property” has the meaning ascribed to it in
3 the Securities Investor Protection Act of 1970.

4 (8) FEDERAL RESERVE BOARD.—The term
5 “Federal Reserve Board” means the Board of Gov-
6 ernors of the Federal Reserve System.

7 (9) FINANCIAL COMPANY.—The term “financial
8 company” means any company that—

9 (A) is incorporated or organized under
10 Federal law or the laws of any State;

11 (B) is—

12 (i) any bank holding company as de-
13 fined in section 2(a) of the Bank Holding
14 Company Act of 1956 (12 U.S.C.
15 1841(a));

16 (ii) any company that has been sub-
17 jected to stricter prudential regulation
18 under section 1103;

19 (iii) any insurance company;

20 (iv) any company predominantly en-
21 gaged in activities that are financial in na-
22 ture or incidental thereto for purposes of
23 section 4(k) of the Bank Holding Company
24 Act of 1956 (12 U.S.C. 1843(k)) or activi-
25 ties that have been identified for stricter

1 prudential standards under section 1103 of
2 this title; or

3 (v) any subsidiary of companies de-
4 scribed in clauses (i) through (iv) (other
5 than an insured depository institution or
6 any broker or dealer registered with the
7 Commission under section 15(b) of the Se-
8 curities Exchange Act of 1934 (15 U.S.C.
9 78o(b)) that is a member of the Securities
10 Investor Protection Corporation);

11 (C) that is not a Farm Credit System in-
12 stitution chartered under and subject to the
13 provisions of the Farm Credit Act of 1971, as
14 amended (12 U.S.C. 2001 et seq.);

15 (D) that is not a Federal home loan bank,
16 the Federal National Mortgage Association, or
17 the Federal Home Loan Mortgage Corporation;
18 and

19 (E) is not an insured depository institution
20 (as defined in section 3(c) of the Federal De-
21 posit Insurance act), a Federal credit union or
22 a State-chartered credit union (as such terms
23 are defined in section 101 of the Federal Credit
24 Union Act), or a government-sponsored enter-
25 prise (as such term is defined in section 1004(f)

1 of the Financial Institutions Reform, Recovery
2 and Enforcement Act of 1989 (12 U.S.C. 1811
3 note)).

4 (10) FUND.—The term “Fund” means the Sys-
5 temic Dissolution Fund established in accordance
6 with section 1609(n).

7 (11) INSURANCE COMPANY.—The term “insur-
8 ance company” means any entity covered by a State
9 law designed specifically to deal with the rehabilita-
10 tion, liquidation, or insolvency of an insurance com-
11 pany.

12 (12) SECRETARY.—The term “Secretary” shall
13 mean the Secretary of the Treasury.

14 (13) STATE.—The term “State” means any
15 State, commonwealth, territory, or possession of the
16 United States, the District of Columbia, the Com-
17 monwealth of Puerto Rico, the Commonwealth of the
18 Northern Mariana Islands, American Samoa, Guam,
19 and the United States Virgin Islands.

20 (14) CERTAIN OTHER TERMS.—The terms “af-
21 filiate”, “company”, “control”, “deposit”, “deposi-
22 tory institution”, “foreign bank”, “insured deposi-
23 tory institution”, and “subsidiary” have the same
24 meanings as in section 3 of the Federal Deposit In-
25 surance Act (12 U.S.C. 1813).

1 **SEC. 1603. SYSTEMIC RISK DETERMINATION.**

2 (a) WRITTEN RECOMMENDATION OF THE FEDERAL
3 RESERVE BOARD AND THE APPROPRIATE REGULATORY
4 AGENCY.—

5 (1) VOTE REQUIRED.—

6 (A) IN GENERAL.—At the request of the
7 Secretary, the Chairman of the Federal Reserve
8 Board, or the appropriate regulatory agency,
9 the Board and the appropriate regulatory agen-
10 cy shall, or on their own initiative the Board
11 and the appropriate regulatory agency may,
12 consider whether to make the written rec-
13 ommendation provided for in paragraph (2)
14 with respect to a financial company.

15 (B) TWO-THIRDS AGREEMENT.—Any rec-
16 ommendation under subparagraph (A) shall be
17 made upon a vote of not less than two-thirds of
18 the members of the Federal Reserve Board then
19 serving and not less than two thirds of any
20 members of the board or commission then serv-
21 ing of the appropriate regulatory agency, as ap-
22 plicable.

23 (2) RECOMMENDATION REQUIRED.—Any writ-
24 ten recommendations made by the Federal Reserve
25 Board and the appropriate regulatory agency under
26 paragraph (1) shall contain the following:

1 (A) A description of the effect that the de-
2 fault of the financial company would have on
3 economic conditions or financial stability in the
4 United States.

5 (B) A description of the effect that the de-
6 fault of the financial company would have on
7 economic conditions or financial stability for
8 low-income, minority, or underserved commu-
9 nities.

10 (C) A recommendation regarding the na-
11 ture and the extent of actions that the Board
12 and the appropriate regulatory agency rec-
13 ommend be taken under section 1604 regarding
14 the financial company.

15 (b) DETERMINATION BY THE SECRETARY.—Notwith-
16 standing any other provision of Federal law or the law
17 of any State, if, upon the written recommendation of the
18 Federal Reserve Board and the appropriate regulatory
19 agency as provided for in subsection (a)(1), the Secretary
20 (in consultation with the President) determines that—

21 (1) the financial company is in default or is in
22 danger of default;

23 (2) the failure of the financial company and its
24 dissolution under otherwise applicable Federal or
25 State law would have serious adverse effects on fi-

1 nancial stability or economic conditions in the
2 United States; and

3 (3) any action under section 1604 would avoid
4 or mitigate such adverse effects, taking into consid-
5 eration the effectiveness of the action in mitigating
6 potential adverse effects on the financial system or
7 economic conditions, the cost to the general fund of
8 the Treasury, and the potential to increase moral
9 hazard on the part of creditors, counterparties, and
10 shareholders in the financial company,

11 then the Secretary must take action under section
12 1604(a), the Corporation must act in accordance with sec-
13 tion 1604(b), and the Corporation may take 1 or more
14 actions specified in section 1604(c) in accordance with the
15 requirements of that subsection, except that, prior to the
16 Secretary or Corporation taking any action under section
17 1604, the Federal Reserve Board or the appropriate Fed-
18 eral regulatory agency shall take action to avoid or miti-
19 gate potential adverse effects on low-income, minority, or
20 underserved communities affected by the failure of such
21 financial company.

22 (c) DOCUMENTATION AND REVIEW.—

23 (1) IN GENERAL.—The Secretary shall—

24 (A) document any determination under
25 subsection (b); and

1 (B) retain the documentation for review
2 under paragraph (2).

3 (2) GAO REVIEW.—The Comptroller General of
4 the United States shall review and report to the
5 Congress on any determination under subsection (b),
6 including—

7 (A) the basis for the determination;

8 (B) the purpose for which any action was
9 taken pursuant thereto; and

10 (C) the likely effect of the determination
11 and such action on the incentives and conduct
12 of financial companies and their creditors,
13 counterparties, and shareholders.

14 (3) REPORT TO CONGRESS.—Within 48 hours
15 after a determination is made under subsection (b),
16 the Secretary shall provide written notice of the de-
17 termination to the Committee on Banking, Housing,
18 and Urban Affairs and the Committee on the Judici-
19 ary of the Senate and the Committee on Financial
20 Services and the Committee on the Judiciary of the
21 House of Representatives. The notice shall include a
22 description of the basis for the determination.

23 (d) DEFAULT OR IN DANGER OF DEFAULT.—For
24 purposes of subsection (b), a financial company shall be
25 considered to be in default or in danger of default if any

1 of the following conditions exist, as determined in accord-
2 ance with that subsection:

3 (1) A case has been, or likely will promptly be,
4 commenced with respect to the financial company
5 under title 11, United States Code.

6 (2) The financial company is critically under-
7 capitalized, as such term has been or may be defined
8 by the Federal Reserve Board.

9 (3) The financial company has incurred, or is
10 likely to incur, losses that will deplete all or substan-
11 tially all of its capital, and there is no reasonable
12 prospect for the company to avoid such depletion
13 without assistance under section 1604.

14 (4) The assets of the financial company are, or
15 are likely to be, less than its obligations to creditors
16 and others.

17 (5) The financial company is, or is likely to be,
18 unable to pay its obligations (other than those sub-
19 ject to a bona fide dispute) in the normal course of
20 business.

21 **SEC. 1604. DISSOLUTION; STABILIZATION.**

22 (a) APPOINTMENT OF RECEIVER.—

23 (1) IN GENERAL.—Upon the Secretary making
24 a determination in accordance with section 1603(b),

1 the Secretary shall appoint the Corporation as re-
2 ceiver for the covered financial company.

3 (2) TIME LIMIT ON RECEIVERSHIP AUTHOR-
4 ITY.—Any appointment of the Corporation as re-
5 ceiver under paragraph (1) shall terminate on the
6 date that is the end of the 1-year period beginning
7 on the date such appointment is made.

8 (3) EXTENSION OF TIME LIMIT.—The time
9 limit established in paragraph (2) may be extended
10 by the Secretary for up to 1 additional year if—

11 (A) the Corporation has not completed the
12 dissolution of the company within the time pro-
13 vided in paragraph (2); and

14 (B) the Secretary certifies in writing that
15 continuation of the receivership is necessary—

16 (i) to protect the best interests of the
17 taxpayers of the United States; and

18 (ii) to protect the stability of the fi-
19 nancial system and the economy of the
20 United States.

21 (4) FURTHER EXTENSION.—The time limit, as
22 extended in paragraph (3), may be extended for up
23 to 1 additional year if—

24 (A) the conditions of paragraph (3) are
25 met; and

1 (B) the Corporation submits a report to
2 the Congress, no later than 60 days before the
3 receivership will expire under the extended limit
4 under paragraph (3), that describes in detail—

5 (i) the basis for the determination by
6 the Corporation that a second extension is
7 necessary; and

8 (ii) the specific plan of the Corpora-
9 tion for concluding the receivership before
10 the end of the proposed additional year.

11 (b) DISSOLUTION LIMITATIONS.—

12 (1) IN GENERAL.—An insolvent financial com-
13 pany may be dissolved under this subtitle only if the
14 failure and dissolution of such company under title
15 11, United States Code, would be systemically desta-
16 bilizing, as determined by the appropriate Federal
17 regulatory agencies and the Secretary of the Treas-
18 ury (in consultation with the President) in accord-
19 ance with section 1603(b).

20 (2) LIQUIDATION.—A financial company that
21 comes within coverage of this subtitle for dissolution
22 shall be placed in liquidation, and the associated liq-
23 uidation costs shall be paid from the company's as-
24 sets and borne by the shareholders and unsecured
25 creditors of such company.

1 (3) ASSESSMENT FOR EXCESS LIQUIDATION
2 COSTS.—Any liquidation costs that exceed the
3 amount of liquidated assets of the company shall be
4 paid through assessments on large financial compa-
5 nies.

6 (c) CONSULTATION.—The Corporation, as receiver—
7 (1) shall consult with the regulators of the cov-
8 ered financial company and its covered subsidiaries
9 for purposes of ensuring an orderly dissolution of
10 the covered financial company;

11 (2) may consult with, or under section
12 1609(a)(1)(B)(v) or section 1609(a)(1)(K) acquire
13 services of, any outside experts as appropriate to in-
14 form and aid the Corporation in the dissolution
15 process; and

16 (3) shall consult with the primary regulators of
17 any subsidiaries of the covered financial company
18 that are not covered subsidiaries as described in sec-
19 tion 1602(9)(B)(v) and coordinate with such regu-
20 lators regarding the treatment of such solvent sub-
21 sidiaries and the separate dissolution of any such in-
22 solvent subsidiaries under other governmental au-
23 thority, as appropriate.

24 (d) EMERGENCY STABILIZATION AFTER APPOINT-
25 MENT OF RECEIVER.—Upon the Secretary appointing the

1 Corporation as receiver under subsection (a), the Corpora-
2 tion may, in its corporate capacity and as an agency of
3 the United States, with the approval of the Secretary and
4 subject to the conditions in subsections (f) through (g),
5 take the following actions under such terms and conditions
6 that the Corporation and the Secretary jointly deem ap-
7 propriate:

8 (1) Making loans to, or purchasing any debt ob-
9 ligation of, the covered financial company or any
10 covered subsidiary.

11 (2) Purchasing assets of the covered financial
12 company or any covered subsidiary directly or
13 through an entity established by the Corporation for
14 such purpose.

15 (3) Assuming or guaranteeing the obligations of
16 the covered financial company or any covered sub-
17 sidiary to one or more third parties.

18 (4) Taking a lien on any or all assets of the
19 covered financial company or any covered subsidiary,
20 including a first priority lien on all unencumbered
21 assets of the company or any covered subsidiary to
22 secure repayment of any transactions conducted
23 under this subsection.

24 (5) Selling or transferring all, or any part
25 thereof, of such acquired assets, liabilities, or obliga-

1 tions of the covered financial company or any cov-
2 ered subsidiary.

3 (e) TREATMENT OF INSURANCE COMPANIES AND IN-
4 SURANCE COMPANY SUBSIDIARIES.—

5 (1) IN GENERAL.—Notwithstanding subsection
6 (a), if an insurance company covered by a State law
7 designed specifically to deal with the rehabilitation,
8 liquidation or insolvency of an insurance company is
9 a covered financial company or a subsidiary of a cov-
10 ered financial company, resolution of such insurance
11 company, and any subsidiary of such company, will
12 be conducted as provided under such State law.

13 (2) EXCEPTION FOR COVERED SUBSIDIARIES.—
14 The requirement of paragraph (1) shall not apply
15 with respect to any covered subsidiary of such an in-
16 surance company, that is not itself an insurance
17 company.

18 (3) BACKUP AUTHORITY.—Notwithstanding
19 paragraph (1), with respect to a covered financial
20 company described under paragraph (1), if, after the
21 end of the 60-day period beginning on the date a de-
22 termination is made under section 1603(b) with re-
23 spect to such company, the appropriate regulatory
24 agency has not filed the appropriate judicial action
25 in the appropriate State court to place such com-

1 pany into dissolution under the State’s laws and re-
2 quirements, the Corporation shall have the authority
3 to stand in the place of the appropriate regulatory
4 agency and file the appropriate judicial action in the
5 appropriate State court to place such company into
6 dissolution under the State’s laws and requirements.

7 (f) MANDATORY TERMS AND CONDITIONS FOR ALL
8 STABILIZATION ACTIONS.—The Corporation as receiver is
9 authorized to take the stabilization actions listed in sub-
10 section (d) only if—

11 (1) the Secretary and the Corporation deter-
12 mine that such action is necessary for the purpose
13 of financial stability and not for the purpose of pre-
14 serving the covered financial company;

15 (2) the Corporation ensures that the share-
16 holders of a covered financial company do not re-
17 ceive payment until after all other claims are fully
18 paid;

19 (3) the Corporation ensures that any funds
20 from taxpayers shall be repaid as part of the resolu-
21 tion process before payments are made to creditors;

22 (4) the Corporation ensures that unsecured
23 creditors bear losses;

24 (5) the Corporation ensures that management
25 responsible for the failed condition of the covered fi-

1 nancial company is removed (if such management
2 has not already been removed at the time the Cor-
3 poration is appointed as receiver); and

4 (6) the Corporation ensures that the members
5 of the board of directors (or body performing similar
6 functions) responsible for the failed condition of the
7 covered financial company are removed (if such
8 members have not already been removed at the time
9 the Corporation is appointed as receiver).

10 (g) RECOUPMENT OF FUNDS EXPENDED FOR SYS-
11 TEMIC STABILIZATION PURPOSES.—Amounts expended
12 from the Fund by the Corporation under this section shall
13 be repaid in full to the Fund only from the following
14 sources:

15 (1) DISSOLUTION PROCESS.—Amounts attrib-
16 utable to the proceeds of the sale of, or income from,
17 the assets of the covered financial company.

18 (2) INDUSTRY ASSESSMENTS.—If the sources
19 described in paragraph (1) are insufficient to repay
20 the amount of the stabilization action in full, the dif-
21 ference shall be recouped through assessments on fi-
22 nancial companies in accordance with section
23 1609(o).

1 **SEC. 1605. JUDICIAL REVIEW.**

2 If a receiver is appointed in accordance with section
3 1604, the covered financial company may, not later than
4 30 days thereafter, bring an action in the United States
5 district court for the judicial district in which the home
6 office of such covered financial company is located, or in
7 the United States District Court for the District of Colum-
8 bia, for an order requiring that the receiver be removed,
9 and the court shall, upon the merits, dismiss such action
10 or direct the receiver to be removed. Review of such an
11 action shall be limited to the appointment of a receiver
12 under section 1604.

13 **SEC. 1606. DIRECTORS NOT LIABLE FOR ACQUIESCING IN**
14 **APPOINTMENT OF RECEIVER.**

15 The members of the board of directors (or body per-
16 forming similar functions) of a covered financial company
17 shall not be liable to the covered financial company's
18 shareholders or creditors for acquiescing in or consenting
19 in good faith to—

20 (1) the Secretary's appointment of the Corpora-
21 tion as receiver for the covered financial company
22 under section 1604; or

23 (2) an acquisition, combination, or transfer of
24 assets or liabilities under section 1609.

1 **SEC. 1607. TERMINATION AND EXCLUSION OF OTHER AC-**
2 **TIONS.**

3 (a) TERMINATION AND EXCLUSION OF BANK-
4 RUPTCY.—The Corporation’s acting as receiver for a cov-
5 ered financial company under this subtitle shall imme-
6 diately, and by operation of law, terminate any case com-
7 menced with respect to the covered financial company
8 under title 11, United States Code, or any proceeding
9 under any State insolvency law with respect to the covered
10 financial company, and no such case or proceeding may
11 be commenced with respect to the covered financial com-
12 pany at any time while the Corporation acts as receiver
13 for the covered financial company.

14 (b) CONVERSION TO BANKRUPTCY.—

15 (1) CONVERSION.—The Corporation may at any
16 time, with the approval of the Secretary and after
17 consulting with the Council, convert the receivership
18 of a covered financial company to a proceeding
19 under chapter 7 or 11 of title 11, United States
20 Code, by filing a petition against the covered finan-
21 cial company under section 303(m) of such title. The
22 Corporation may serve as the trustee for the covered
23 financial company in bankruptcy.

24 (2) BRIDGE FINANCIAL COMPANY.—The Cor-
25 poration’s exercise of authority under paragraph (1)
26 shall not affect any powers or duties of the Corpora-

tion with regard to any bridge financial company established under section 1609(h).

(c) REPORTING TO THE CONGRESS.—

(1) IN GENERAL.—

(A) INITIAL REPORT.—Upon the appointment of the Corporation as receiver under section 1604(a), the Corporation shall issue a report on the issue described under paragraph (3)(A).

(B) CONTINUING REPORTS.—At the end of each 180-day period after the appointment of the Corporation as receiver under section 1604(a), and continuing while the Corporation is acting as receiver, the Corporation shall issue a report on the issues described under subparagraphs (A) through (C) of paragraph (3).

(2) COMMITTEES TO RECEIVE REPORTS.—Reports issued under this subsection shall be issued to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives.

(3) REPORTING ISSUES.—

1 (A) Why the receivership should continue
2 instead of converting the receivership into a
3 proceeding under chapter 7 or 11 of title 11,
4 United States Code.

5 (B) The extent to which unsecured credi-
6 tors are likely to receive at least as much as
7 they would receive if the receivership of the cov-
8 ered financial company was converted to a case
9 under chapter 7 of title 11, United States Code.

10 (C) An explanation of each instance where
11 the Corporation as receiver of a covered finan-
12 cial company waived the requirement of 12
13 CFR Part 366 with respect to conflicts of inter-
14 est by any person in the private sector who was
15 retained to provide services to the Corporation
16 in connection with such receivership.

17 **SEC. 1608. RULEMAKING.**

18 The Corporation may, after following the notice and
19 comment rulemaking requirements under the Administra-
20 tive Procedure Act, prescribe such regulations as the Cor-
21 poration considers necessary or appropriate to implement
22 the provisions of this title.

23 **SEC. 1609. POWERS AND DUTIES OF CORPORATION.**

24 (a) POWERS AND AUTHORITIES.—

25 (1) GENERAL POWERS.—

1 (A) SUCCESSOR TO COVERED FINANCIAL
2 COMPANY.—The Corporation shall, upon ap-
3 pointment as receiver for a covered financial
4 company under section 1604, and by operation
5 of law, succeed to—

6 (i) all rights, titles, powers, and privi-
7 leges of the covered financial company, and
8 of any stockholder, member, officer, or di-
9 rector of such institution with respect to
10 the covered financial company and the as-
11 sets of the covered financial company; and

12 (ii) title to the books, records, and as-
13 sets of any previous receiver or other legal
14 custodian of such covered financial com-
15 pany.

16 (B) OPERATE THE COVERED FINANCIAL
17 COMPANY.—The Corporation as receiver for a
18 covered financial company may—

19 (i) take over the assets of and operate
20 the covered financial company with all the
21 powers of the members or shareholders,
22 the directors, and the officers of the cov-
23 ered financial company and conduct all
24 business of the covered financial company;

1 (ii) collect all obligations and money
2 due the covered financial company;

3 (iii) perform all functions of the cov-
4 ered financial company in the name of the
5 covered financial company;

6 (iv) preserve and conserve the assets
7 and property of the covered financial com-
8 pany; and

9 (v) provide by contract for assistance
10 in fulfilling any function, activity, action,
11 or duty of the Corporation as receiver.

12 (C) FUNCTIONS OF COVERED FINANCIAL
13 COMPANY'S OFFICERS, DIRECTORS, AND SHARE-
14 HOLDERS.—

15 (i) IN GENERAL.—The Corporation
16 may provide for the exercise of any func-
17 tion by any member or stockholder, direc-
18 tor, or officer of any covered financial com-
19 pany for which the Corporation has been
20 appointed as receiver under this section.

21 (ii) PRESUMPTION.—There shall be a
22 strong presumption that the Corporation,
23 as receiver, will remove management re-
24 sponsible for the failed condition of the
25 covered financial company (if such man-

1 agement has not already been removed at
2 the time the Corporation is appointed as
3 receiver).

4 (D) ADDITIONAL POWERS AS RECEIVER.—

5 The Corporation may, as receiver, and subject
6 to all legally enforceable and perfected security
7 interests, place the covered financial company
8 in liquidation and proceed to realize upon the
9 assets of the covered financial company in such
10 manner as the Corporation deems appropriate,
11 including through the sale of assets, the trans-
12 fer of assets to a bridge financial company es-
13 tablished under subsection (h), or the exercise
14 of any other rights or privileges granted to the
15 receiver under this section.

16 (E) ORGANIZATION OF NEW COMPANIES.—

17 The Corporation as receiver may organize a
18 bridge financial company under subsection (h).

19 (F) MERGER; TRANSFER OF ASSETS AND
20 LIABILITIES.—

21 (i) IN GENERAL.—Subject to clause
22 (ii), the Corporation as receiver may—

23 (I) merge the covered financial
24 company with another company; or

1 (II) transfer any asset or liability
2 of the covered financial company (in-
3 cluding assets and liabilities associ-
4 ated with any trust or custody busi-
5 ness) without obtaining any approval,
6 assignment, or consent with respect to
7 such transfer.

8 (ii) FEDERAL AGENCY APPROVAL;
9 ANTITRUST REVIEW.—

10 (I) IN GENERAL.—If a trans-
11 action described in clause (i) requires
12 approval by a Federal agency, the
13 transaction may not be consummated
14 before the 5th calendar day after the
15 date of approval by the Federal agen-
16 cy responsible for such approval with
17 respect thereto. If, in connection with
18 any such approval, a report on com-
19 petitive factors is required, the Fed-
20 eral agency responsible for such ap-
21 proval shall promptly notify the Attor-
22 ney General of the proposed trans-
23 action and the Attorney General shall
24 provide the required report within 10
25 days of the request. If notification

1 under section 7A of the Clayton Act is
2 required with respect to such trans-
3 action, then the required waiting pe-
4 riod shall end on the 15th day after
5 the date on which the Attorney Gen-
6 eral and the Federal Trade Commis-
7 sion receive such notification, unless
8 the waiting period is terminated ear-
9 lier under subsection (b)(2) of such
10 section, or is extended pursuant to
11 subsection (e)(2) of such section.

12 (II) EMERGENCY.—If the Sec-
13 retary in consultation with the Chair-
14 man of the Federal Reserve Board
15 has found that the Corporation must
16 act immediately to prevent the prob-
17 able failure of the covered financial
18 company involved, the approval and
19 prior notification referred to in sub-
20 clause (I) shall not be required and
21 the transaction may be consummated
22 immediately by the Corporation. The
23 preceding sentence shall not otherwise
24 modify, impair, or supercede the oper-
25 ation of any of the antitrust laws (as

1 defined in subsection (a) of the first
2 section of the Clayton Act, except that
3 such term includes section 5 of the
4 Federal Trade Commission Act to the
5 extent that such section 5 relates to
6 unfair methods of competition).

7 (G) PAYMENT OF VALID OBLIGATIONS.—
8 The Corporation, as receiver, shall, to the ex-
9 tent funds are available, pay all valid obliga-
10 tions of the covered financial company that are
11 due and payable at the time of the appointment
12 of the Corporation as receiver in accordance
13 with the prescriptions and limitations of this
14 title.

15 (H) SUBPOENA AUTHORITY.—
16 (i) IN GENERAL.—The Corporation
17 may, for purposes of carrying out any
18 power, authority, or duty with respect to a
19 covered financial company (including deter-
20 mining any claim against the covered fi-
21 nancial company and determining and real-
22 izing upon any asset of any person in the
23 course of collecting money due the covered
24 financial company), exercise any power es-
25 tablished under section 8(n) of the Federal

1 Deposit Insurance Act as if the covered fi-
2 nancial company were an insured deposi-
3 tory institution.

4 (ii) RULE OF CONSTRUCTION.—This
5 section shall not be construed as limiting
6 any rights that the Corporation, in any ca-
7 pacity, might otherwise have to exercise
8 any powers described in clause (i) under
9 any other provision of law.

10 (I) INCIDENTAL POWERS.—The Corpora-
11 tion, as receiver, may—

12 (i) exercise all powers and authorities
13 specifically granted to receivers under this
14 section and such incidental powers as shall
15 be necessary to carry out such powers; and

16 (ii) take any action authorized by this
17 section, which the Corporation determines
18 is in the best interests of the covered fi-
19 nancial company, its customers, its credi-
20 tors, its counterparties, or the stability of
21 the financial system.

22 (J) UTILIZATION OF PRIVATE SECTOR.—In
23 carrying out its responsibilities in the manage-
24 ment and disposition of assets from a covered
25 financial company, the Corporation, as receiver,

1 may utilize the services of private persons, in-
2 cluding real estate and loan portfolio asset
3 management, property management, auction
4 marketing, legal, and brokerage services, if such
5 services are available in the private sector and
6 the Corporation determines utilization of such
7 services is practicable, efficient, and cost effec-
8 tive.

9 (K) SHAREHOLDERS AND CREDITORS OF
10 COVERED FINANCIAL COMPANY.—Notwith-
11 standing any other provision of law, the Cor-
12 poration as receiver for a covered financial com-
13 pany pursuant to this section and its succes-
14 sion, by operation of law, to the rights, titles,
15 powers, and privileges described in subpara-
16 graph (A) shall terminate all rights and claims
17 that the stockholders and creditors of the cov-
18 ered financial company may have against the
19 assets of the covered financial company or the
20 Corporation arising out of their status as stock-
21 holders or creditors, except for their right to
22 payment, resolution, or other satisfaction of
23 their claims, as permitted under this section.
24 The Corporation shall ensure that shareholders
25 and unsecured creditors bear losses, consistent

1 with the priority of claims provisions in section
2 1609(b).

3 (L) COORDINATION WITH FOREIGN FINAN-
4 CIAL AUTHORITIES.—The Corporation as re-
5 ceiver for a covered financial company shall co-
6 ordinate with the appropriate foreign financial
7 authorities regarding the dissolution of subsidi-
8 aries of the covered financial company that are
9 established in a country other than the United
10 States.

11 (M) APPOINTMENT OF CONSUMER PRIVACY
12 ADVISOR.—

13 (i) APPOINTMENT.—Upon the ap-
14 pointment of the Corporation as receiver
15 under section 1604(a), the Corporation
16 shall appoint a Consumer Privacy Advisor.

17 (ii) DUTIES.—The Consumer Privacy
18 Advisor appointed under clause (i) shall
19 advise the Corporation with respect to—

20 (I) the covered financial com-
21 pany's consumer privacy policies;

22 (II) the potential losses or gains
23 of privacy to consumers upon any
24 sale, lease, or other transfer of mate-

1 rial assets of the covered financial
2 company;

3 (III) the potential costs or bene-
4 fits to consumers upon any sale, lease,
5 or other transfer of material assets of
6 the covered financial company; and

7 (IV) the potential alternatives
8 that would mitigate potential privacy
9 loses or potential costs to consumers.

10 (2) AUTHORITY OF CORPORATION TO DETER-
11 MINE CLAIMS.—

12 (A) IN GENERAL.—The Corporation may,
13 as receiver, determine claims in accordance with
14 the requirements of this subsection and regula-
15 tions prescribed under paragraph (3).

16 (B) NOTICE REQUIREMENTS.—The re-
17 ceiver, in any case involving the liquidation or
18 winding up of the affairs of a covered financial
19 company, shall—

20 (i) promptly publish a notice to the
21 covered financial company's creditors to
22 present their claims, together with proof,
23 to the receiver by a date specified in the
24 notice which shall be not less than 90 days
25 after the publication of such notice; and

1 (ii) republish such notice approxi-
2 mately 1 month and 2 months, respec-
3 tively, after the publication under clause
4 (i).

5 (C) MAILING REQUIRED.—The receiver
6 shall mail a notice similar to the notice pub-
7 lished under subparagraph (B)(i) at the time of
8 such publication to any creditor shown on the
9 covered financial company's books—

10 (i) at the creditor's last address ap-
11 pearing in such books; or

12 (ii) upon discovery of the name and
13 address of a claimant not appearing on the
14 covered financial company's books, within
15 30 days after the discovery of such name
16 and address.

17 (3) RULEMAKING AUTHORITY RELATING TO DE-
18 TERMINATION OF CLAIMS.—

19 (A) IN GENERAL.—Subject to subsection
20 (b), the Corporation shall, after following the
21 notice and comment rulemaking requirements
22 under the Administrative Procedure Act, pre-
23 scribe rules and regulations regarding the al-
24 lowance or disallowance of claims by the Cor-
25 poration and providing for administrative deter-

1 mination of claims and review of such deter-
2 mination.

3 (B) EXISTING RULES.—The Corporation
4 may elect to use the regulations adopted pursu-
5 ant to the provisions of section 11 of the Fed-
6 eral Deposit Insurance Act with respect to the
7 determination of claims for a covered financial
8 company as if the covered financial company
9 were an insured depository institution.

10 (4) PROCEDURES FOR DETERMINATION OF
11 CLAIMS.—

12 (A) DETERMINATION PERIOD.—

13 (i) IN GENERAL.—Before the end of
14 the 180-day period beginning on the date
15 any claim against a covered financial com-
16 pany is filed with the Corporation as re-
17 ceiver, the Corporation shall determine
18 whether to allow or disallow the claim and
19 shall notify the claimant of any determina-
20 tion with respect to such claim.

21 (ii) EXTENSION OF TIME.—The period
22 described in clause (i) may be extended by
23 a written agreement between the claimant
24 and the Corporation.

1 (iii) MAILING OF NOTICE SUFFI-
2 CIENT.—The requirements of clause (i)
3 shall be deemed to be satisfied if the notice
4 of any determination with respect to any
5 claim is mailed to the last address of the
6 claimant which appears—

7 (I) on the covered financial com-
8 pany's books;

9 (II) in the claim filed by the
10 claimant; or

11 (III) in documents submitted in
12 proof of the claim.

13 (iv) CONTENTS OF NOTICE OF DIS-
14 ALLOWANCE.—If any claim filed under
15 clause (i) is disallowed, the notice to the
16 claimant shall contain—

17 (I) a statement of each reason
18 for the disallowance; and

19 (II) the procedures available for
20 obtaining agency review of the deter-
21 mination to disallow the claim or judi-
22 cial determination of the claim.

23 (B) ALLOWANCE OF PROVEN CLAIM.—The
24 Corporation shall allow any claim received on or
25 before the date specified in the notice published

1 under paragraph (2)(B)(i) by the Corporation
2 from any claimant which is proved to the satis-
3 faction of the Corporation.

4 (C) DISALLOWANCE OF CLAIMS FILED
5 AFTER END OF FILING PERIOD.—

6 (i) IN GENERAL.—Except as provided
7 in clause (ii), claims filed after the date
8 specified in the notice published under
9 paragraph (2)(B)(i) shall be disallowed
10 and such disallowance shall be final.

11 (ii) CERTAIN EXCEPTIONS.—Clause
12 (i) shall not apply with respect to any
13 claim filed by any claimant after the date
14 specified in the notice published under
15 paragraph (2)(B)(i) and such claim may
16 be considered by the receiver if—

17 (I) the claimant did not receive
18 notice of the appointment of the re-
19 ceiver in time to file such claim before
20 such date; and

21 (II) such claim is filed in time to
22 permit payment of such claim.

23 (D) AUTHORITY TO DISALLOW CLAIMS.—

24 (i) IN GENERAL.—The Corporation
25 may disallow any portion of any claim by

1 a creditor or claim of security, preference,
2 or priority which is not proved to the satis-
3 faction of the Corporation.

4 (ii) PAYMENTS TO LESS THAN FULLY
5 SECURED CREDITORS.—In the case of a
6 claim of a creditor against a covered finan-
7 cial company which is secured by any prop-
8 erty or other asset of such covered finan-
9 cial company, the receiver—

10 (I) may treat the portion of such
11 claim which exceeds an amount equal
12 to the fair market value of such prop-
13 erty or other asset as an unsecured
14 claim against the covered financial
15 company; and

16 (II) may not make any payment
17 with respect to such unsecured por-
18 tion of the claim other than in connec-
19 tion with the disposition of all claims
20 of unsecured creditors of the covered
21 financial company.

22 (iii) EXCEPTIONS.—No provision of
23 this paragraph shall apply with respect
24 to—

1 (I) any extension of credit from
2 any Federal Reserve bank, or the Cor-
3 poration, to any covered financial
4 company; or

5 (II) subject to clause (ii), any le-
6 gally enforceable or perfected security
7 interest in the assets of the covered fi-
8 nancial company securing any such
9 extension of credit.

10 (iv) PAYMENTS TO FULLY SECURED
11 CREDITORS.—Notwithstanding any other
12 provision of law, in any receivership of a
13 covered financial company in which
14 amounts realized from the dissolution are
15 insufficient to satisfy completely any
16 amounts owed to the United States or to
17 the Fund, as determined in the receiver's
18 sole discretion, an allowed claim under a
19 legally enforceable or perfected security in-
20 terest in assets of the covered financial
21 company arising under a qualified financial
22 contract (as defined under subsection
23 (c)(8)(D)(i)) with an original term of 30
24 days or less (except that, for a contract for
25 a term linked to a calendar month, the

1 original term must be less than 1 calendar
2 month), secured by collateral other than
3 securities issued by the United States
4 Treasury, the Board of Governors of the
5 Federal Reserve System, any agency of the
6 United States, any Federal Reserve bank,
7 or any Government Sponsored Enterprise,
8 that became a legally enforceable or per-
9 fected security interest after the date of
10 the enactment of this clause, and that is
11 not a security interest of the Federal Gov-
12 ernment in any of the assets of the covered
13 financial company in receivership may be
14 treated as an unsecured claim in the
15 amount specified under clause (v) as nec-
16 essary to satisfy any amounts owed to the
17 United States or to the Fund. Any balance
18 of such claim that is treated as an unse-
19 cured claim under this subparagraph shall
20 be paid as a general liability of the covered
21 financial company. This clause shall not
22 apply with respect to debt obligations se-
23 cured by real property. This clause may
24 only be implemented with respect to se-
25 cured creditors if, as a result of the dis-

1 solution of the covered financial company,
2 no funds are available to satisfy, in whole
3 or in part, any claims of unsecured credi-
4 tors or shareholders.

5 (v) AMOUNT SPECIFIED.—For pur-
6 poses of clause (iv), the amount specified
7 under this clause, in the case of a secured
8 creditor, is the amount of up to 10 per-
9 cent.

10 (E) NO JUDICIAL REVIEW OF DETERMINA-
11 TION PURSUANT TO SUBPARAGRAPH (D).—No
12 court may review the Corporation determination
13 pursuant to subparagraph (D) to disallow a
14 claim.

15 (F) LEGAL EFFECT OF FILING.—

16 (i) STATUTE OF LIMITATION
17 TOLLED.—For purposes of any applicable
18 statute of limitations, the filing of a claim
19 with the Corporation shall constitute a
20 commencement of an action.

21 (ii) NO PREJUDICE TO OTHER AC-
22 TIONS.—Subject to paragraph (9), the fil-
23 ing of a claim with the Corporation shall
24 not prejudice any right of the claimant to
25 continue any action which was filed before

1 the appointment of the Corporation as re-
2 ceiver for the covered financial company.

3 (5) PROVISION FOR JUDICIAL DETERMINATION
4 OF CLAIMS.—

5 (A) IN GENERAL.—Before the end of the
6 60-day period beginning on the earlier of—

7 (i) the end of the period described in
8 paragraph (4)(A)(i) (or, if extended by
9 agreement of the Corporation and the
10 claimant, the period described in para-
11 graph (4)(A)(ii)) with respect to any claim
12 against a covered financial company for
13 which the Corporation is receiver; or

14 (ii) the date of any notice of disallow-
15 ance of such claim pursuant to paragraph
16 (4)(A)(i),

17 the claimant may file suit on a claim (or con-
18 tinue an action commenced before the appoint-
19 ment of the receiver) in the district or terri-
20 torial court of the United States for the district
21 within which the covered financial company's
22 principal place of business is located or the
23 United States District Court for the District of
24 Columbia (and such court shall have jurisdic-
25 tion to hear such claim).

1 (B) STATUTE OF LIMITATIONS.—If any
2 claimant fails to file suit on such claim (or con-
3 tinue an action commenced before the appoint-
4 ment of the receiver) before the end of the 60-
5 day period described in subparagraph (A), the
6 claim shall be deemed to be disallowed (other
7 than any portion of such claim which was al-
8 lowed by the receiver) as of the end of such pe-
9 riod, such disallowance shall be final, and the
10 claimant shall have no further rights or rem-
11 edies with respect to such claim.

12 (6) EXPEDITED DETERMINATION OF CLAIMS.—

13 (A) ESTABLISHMENT REQUIRED.—The
14 Corporation shall establish a procedure for ex-
15 pedited relief outside of the routine claims proc-
16 ess established under paragraph (4) for claim-
17 ants who—

18 (i) allege the existence of legally valid
19 and enforceable or perfected security inter-
20 ests in assets of any covered financial com-
21 pany for which the Corporation has been
22 appointed as receiver; and

23 (ii) allege that irreparable injury will
24 occur if the routine claims procedure is fol-
25 lowed.

1 (B) DETERMINATION PERIOD.—Before the
2 end of the 90-day period beginning on the date
3 any claim is filed in accordance with the proce-
4 dures established pursuant to subparagraph
5 (A), the Corporation shall—

6 (i) determine—

7 (I) whether to allow or disallow
8 such claim; or

9 (II) whether such claim should be
10 determined pursuant to the proce-
11 dures established pursuant to para-
12 graph (4); and

13 (ii) notify the claimant of the deter-
14 mination, and if the claim is disallowed,
15 provide a statement of each reason for the
16 disallowance and the procedure for obtain-
17 ing judicial determination.

18 (C) PERIOD FOR FILING OR RENEWING
19 SUIT.—Any claimant who files a request for ex-
20 pedited relief shall be permitted to file a suit,
21 or to continue such a suit filed before the ap-
22 pointment of the Corporation as receiver, seek-
23 ing a determination of the claimant's rights
24 with respect to such security interest after the
25 earlier of—

1 (i) the end of the 90-day period begin-
2 ning on the date of the filing of a request
3 for expedited relief; or

4 (ii) the date the Corporation denies
5 the claim.

6 (D) STATUTE OF LIMITATIONS.—If an ac-
7 tion described in subparagraph (C) is not filed,
8 or the motion to renew a previously filed suit is
9 not made, before the end of the 30-day period
10 beginning on the date on which such action or
11 motion may be filed in accordance with sub-
12 paragraph (B), the claim shall be deemed to be
13 disallowed as of the end of such period (other
14 than any portion of such claim which was al-
15 lowed by the receiver), such disallowance shall
16 be final, and the claimant shall have no further
17 rights or remedies with respect to such claim.

18 (E) LEGAL EFFECT OF FILING.—

19 (i) STATUTE OF LIMITATION
20 TOLLED.—For purposes of any applicable
21 statute of limitations, the filing of a claim
22 with the receiver shall constitute a com-
23 mencement of an action.

24 (ii) NO PREJUDICE TO OTHER AC-
25 TIONS.—Subject to paragraph (9), the fil-

1 ing of a claim with the receiver shall not
2 prejudice any right of the claimant to con-
3 tinue any action which was filed before the
4 appointment of the Corporation as receiver
5 for the covered financial company.

6 (7) AGREEMENTS AGAINST INTEREST OF THE
7 RECEIVER.—No agreement that tends to diminish or
8 defeat the interest of the Corporation as receiver in
9 any asset acquired by the receiver under this section
10 shall be valid against the receiver unless such agree-
11 ment is in writing and executed by an authorized of-
12 ficer or representative of the covered financial com-
13 pany.

14 (8) PAYMENT OF CLAIMS.—

15 (A) IN GENERAL.—The Corporation as re-
16 ceiver may, in its discretion and to the extent
17 funds are available, pay creditor claims, in such
18 manner and amounts as are authorized under
19 this section, which are—

20 (i) allowed by the receiver;

21 (ii) approved by the Corporation pur-
22 suant to a final determination pursuant to
23 paragraph (6); or

24 (iii) determined by the final judgment
25 of any court of competent jurisdiction.

1 (B) PAYMENT OF DIVIDENDS ON
2 CLAIMS.—The receiver may, in the receiver’s
3 sole discretion and to the extent otherwise per-
4 mitted by this section, pay dividends on proven
5 claims at any time, and no liability shall attach
6 to the Corporation (in the Corporation’s capac-
7 ity as receiver), by reason of any such payment,
8 for failure to pay dividends to a claimant whose
9 claim is not proved at the time of any such pay-
10 ment.

11 (C) RULEMAKING AUTHORITY OF COR-
12 PORATION.—The Corporation may prescribe
13 such rules, including definitions of terms, as it
14 deems appropriate to establish a single uniform
15 interest rate for, or to make payments of post
16 insolvency interest to creditors holding proven
17 claims against the receivership estates of a cov-
18 ered financial company following satisfaction by
19 the receiver of the principal amount of all cred-
20 itor claims.

21 (9) SUSPENSION OF LEGAL ACTIONS.—

22 (A) IN GENERAL.—After the appointment
23 of the Corporation as receiver for a covered fi-
24 nancial company, the Corporation may request
25 a stay for a period not to exceed 90 days in any

1 noncriminal judicial action or proceeding to
2 which such covered financial company is or be-
3 comes a party.

4 (B) GRANT OF STAY BY ALL COURTS RE-
5 QUIRED.—Upon receipt of a request by the Cor-
6 poration pursuant to subparagraph (A) for a
7 stay of any non-criminal judicial action or pro-
8 ceeding in any court with jurisdiction of such
9 action or proceeding, the court shall grant such
10 stay as to all parties.

11 (10) ADDITIONAL RIGHTS AND DUTIES.—

12 (A) PRIOR FINAL ADJUDICATION.—The
13 Corporation shall abide by any final
14 unappealable judgment of any court of com-
15 petent jurisdiction which was rendered before
16 the appointment of the Corporation as receiver.

17 (B) RIGHTS AND REMEDIES OF RE-
18 CEIVER.—In the event of any appealable judg-
19 ment, the Corporation as receiver shall—

20 (i) have all the rights and remedies
21 available to the covered financial company
22 (before the appointment of the receiver
23 under section 1604) and the Corporation,
24 including but not limited to removal to
25 Federal court and all appellate rights; and

1 (ii) not be required to post any bond
2 in order to pursue such remedies.

3 (C) NO ATTACHMENT OR EXECUTION.—No
4 attachment or execution may issue by any court
5 upon assets in the possession of the receiver.

6 (D) LIMITATION ON JUDICIAL REVIEW.—
7 Except as otherwise provided in this subsection,
8 no court shall have jurisdiction over—

9 (i) any claim or action for payment
10 from, or any action seeking a determina-
11 tion of rights with respect to, the assets of
12 any covered financial company for which
13 the Corporation has been appointed re-
14 ceiver, including any assets which the Cor-
15 poration may acquire from itself as such
16 receiver; or

17 (ii) any claim relating to any act or
18 omission of such covered financial company
19 or the Corporation as receiver.

20 (E) DISPOSITION OF ASSETS.—In exer-
21 cising any right, power, privilege, or authority
22 as receiver in connection with any covered fi-
23 nancial company for which the Corporation is
24 acting as receiver under this section, the Cor-
25 poration shall, to the greatest extent prac-

1 ticable, conduct its operations in a manner
2 which—

3 (i) maximizes the net present value
4 return from the sale or disposition of such
5 assets;

6 (ii) minimizes the amount of any loss
7 realized in the resolution of cases;

8 (iii) minimizes the cost to the general
9 fund of the Treasury;

10 (iv) mitigates the potential for serious
11 adverse effects to the financial system and
12 the United States economy;

13 (v) ensures timely and adequate com-
14 petition and fair and consistent treatment
15 of offerors; and

16 (vi) prohibits discrimination on the
17 basis of race, sex, or ethnic groups in the
18 solicitation and consideration of offers.

19 (11) STATUTE OF LIMITATIONS FOR ACTIONS
20 BROUGHT BY RECEIVER.—

21 (A) IN GENERAL.—Notwithstanding any
22 provision of any contract, the applicable statute
23 of limitations with regard to any action brought
24 by the Corporation as receiver shall be—

1 (i) in the case of any contract claim,
2 the longer of—

3 (I) the 6-year period beginning
4 on the date the claim accrues; or

5 (II) the period applicable under
6 State law; and

7 (ii) in the case of any tort claim, the
8 longer of—

9 (I) the 3-year period beginning
10 on the date the claim accrues; or

11 (II) the period applicable under
12 State law.

13 (B) DETERMINATION OF THE DATE ON
14 WHICH A CLAIM ACCRUES.—For purposes of
15 subparagraph (A), the date on which the stat-
16 ute of limitations begins to run on any claim
17 described in such subparagraph shall be the
18 later of—

19 (i) the date of the appointment of the
20 Corporation as receiver under this title; or

21 (ii) the date on which the cause of ac-
22 tion accrues.

23 (C) REVIVAL OF EXPIRED STATE CAUSES
24 OF ACTION.—

1 (i) IN GENERAL.—In the case of any
2 tort claim described in clause (ii) for which
3 the statute of limitation applicable under
4 State law with respect to such claim has
5 expired not more than 5 years before the
6 appointment of the Corporation as re-
7 ceiver, the Corporation may bring an ac-
8 tion as receiver on such claim without re-
9 gard to the expiration of the statute of lim-
10 itation applicable under State law.

11 (ii) CLAIMS DESCRIBED.—A tort
12 claim referred to in clause (i) is a claim
13 arising from fraud, intentional misconduct
14 resulting in unjust enrichment, or inten-
15 tional misconduct resulting in substantial
16 loss to the covered financial company.

17 (12) FRAUDULENT TRANSFERS.—

18 (A) IN GENERAL.—The Corporation, as re-
19 ceiver for any covered financial company, may
20 avoid a transfer of any interest of an institution
21 affiliated party, or any person who the Corpora-
22 tion determines is a debtor of the covered finan-
23 cial company, in property, or any obligation in-
24 curred by such party or person, that was made
25 within 5 years of the date on which the Cor-

1 poration was appointed receiver if such party or
2 person voluntarily or involuntarily made such
3 transfer or incurred such liability with the in-
4 tent to hinder, delay, or defraud the covered fi-
5 nancial company or the Corporation.

6 (B) PREFERENTIAL TRANSFERS.—The
7 Corporation as receiver for any covered finan-
8 cial company may avoid a transfer of an inter-
9 est of the covered financial company in property
10 that—

11 (i) was made to or for the benefit of
12 a creditor;

13 (ii) was made for or on account of an
14 antecedent debt that was owed by the cov-
15 ered financial company before the transfer
16 was made;

17 (iii) was made while the covered fi-
18 nancial company was insolvent;

19 (iv) was made—

20 (I) on or within 90 days before
21 the date on which the Corporation
22 was appointed receiver; or

23 (II) between 90 days and one
24 year before the date that the Corpora-
25 tion was appointed receiver, if such

1 creditor at the time of the transfer
2 was an insider, as that term is defined
3 in section 101(31) of title 11, United
4 States Code; and

5 (v) enables such creditor to receive
6 more than such creditor would receive in
7 the liquidation of the covered financial
8 company if—

9 (I) the transfer had not been
10 made; and

11 (II) such creditor received pay-
12 ment of such debt to the extent pro-
13 vided by the provisions of this sub-
14 title.

15 (C) POST-RECEIVERSHIP TRANSACTIONS.—
16 The Corporation as receiver for any covered fi-
17 nancial company may avoid a transfer of prop-
18 erty of the receivership that occurred after the
19 Corporation was appointed receiver that was
20 not authorized under this title.

21 (D) RIGHT OF RECOVERY.—To the extent
22 that a transfer is avoided under subparagraph
23 (A), (B) or (C), the Corporation may recover,
24 for the benefit of the covered financial com-

pany, the property transferred or, if a court so orders, the value of such property from—

(i) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFeree OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii)—

(i) from a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the violability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—A transferee or obligee from whom the Corporation seeks to recover a transfer or avoid an obligation under subparagraph (A), (B) or (C) shall have the same affirmative defenses and rights to liens on the property transferred to the extent they would be available to a transferee or obligee from whom a trustee under title 11 seeks to recover a

1 transfer under sections 547, 548, and 549 of
2 title 11, United States Code.

3 (G) LIMITATIONS ON AVOIDING POWERS.—

4 The rights of the Corporation under subpara-
5 graph (A), (B) or (C) are restricted to the same
6 extent as the rights of a trustee in bankruptcy
7 under section 546(b)(1) of the Bankruptcy
8 Code.

9 (H) PRESUMPTION OF INSOLVENCY.—For
10 purposes of subparagraph (B), the covered fi-
11 nancial company is presumed to have been in-
12 solvent on and during the 90 days immediately
13 preceding the date on which the Corporation is
14 appointed as receiver.

15 (I) RIGHTS UNDER THIS SUBSECTION.—

16 The rights of the Corporation as receiver for a
17 covered financial company under this subsection
18 shall be superior to any rights of a trustee or
19 any other party (other than any party which is
20 a Federal agency of a Federal Home Loan
21 Bank) under title 11, United States Code.

22 (J) RIGHT OF RECOVERY.—To the extent
23 a transfer is avoided under subparagraph (A),
24 the Corporation may recover, for the benefit of
25 the covered financial company, the property

transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(K) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

(i) any transfer that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(L) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver of a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

1 (M) DEFINITION.—For purposes of this
2 subsection, the term “institution affiliated
3 party” means—

4 (i) any director, officer, employee, or
5 controlling stockholder of, or agent for, a
6 covered financial company;

7 (ii) any shareholder, consultant, joint
8 venture partner, and any other person as
9 determined by the Corporation (by regula-
10 tion or otherwise) who participates in the
11 conduct of the affairs of a covered finan-
12 cial company; and

13 (iii) any independent contractor (in-
14 cluding any attorney, appraiser, or ac-
15 countant) who knowingly or recklessly par-
16 ticipates in—

17 (I) any violation of any law or
18 regulation;

19 (II) any breach of fiduciary duty;
20 or

21 (III) any unsafe or unsound
22 practice,

23 which caused or is likely to cause more
24 than a minimal financial loss to, or a sig-

1 nificant adverse effect on, the covered fi-
2 nancial company.

3 (13) ATTACHMENT OF ASSETS AND OTHER IN-
4 JUNCTIVE RELIEF.—Subject to paragraph (14), any
5 court of competent jurisdiction may, at the request
6 of the Corporation, issue an order in accordance
7 with Rule 65 of the Federal Rules of Civil Proce-
8 dure, including an order placing the assets of any
9 person designated by the Corporation under the con-
10 trol of the court and appointing a trustee to hold
11 such assets.

12 (14) STANDARDS.—

13 (A) SHOWING.—Rule 65 of the Federal
14 Rules of Civil Procedure shall apply with re-
15 spect to any proceeding under paragraph (13)
16 without regard to the requirement of such rule
17 that the applicant show that the injury, loss, or
18 damage is irreparable and immediate.

19 (B) STATE PROCEEDING.—If, in the case
20 of any proceeding in a State court, the court
21 determines that rules of civil procedure avail-
22 able under the laws of such State provide sub-
23 stantially similar protections to such party's
24 right to due process as Rule 65 (as modified
25 with respect to such proceeding by subpara-

graph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

1 (B) ANNUAL ACCOUNTING OR REPORT.—

2 With respect to each receivership to which the
3 Corporation was appointed, the Corporation
4 shall make an annual accounting or report, as
5 appropriate, available to the Secretary and the
6 Comptroller General of the United States.

7 (C) AVAILABILITY OF REPORTS.—Any re-
8 port prepared pursuant to subparagraph (B)
9 shall be made available by the Corporation upon
10 request to any member of the public.

11 (D) RECORDKEEPING REQUIREMENT.—

12 (i) IN GENERAL.—Except as provided
13 in clause (ii), after the end of the 6-year
14 period beginning on the date the Corpora-
15 tion is appointed as receiver of a covered
16 financial company the Corporation may de-
17 stroy any records of such covered financial
18 company which the Corporation, in the
19 Corporation's discretion, determines to be
20 unnecessary unless directed not to do so by
21 a court of competent jurisdiction or gov-
22 ernmental agency, or prohibited by law.

23 (ii) OLD RECORDS.—Notwithstanding
24 clause (i), the Corporation may destroy
25 records of a covered financial company

1 which are at least 10 years old as of the
2 date on which the Corporation is appointed
3 as the receiver of such company in accord-
4 ance with clause (i) at any time after such
5 appointment is final, without regard to the
6 6-year period of limitation contained in
7 clause (i).

8 (b) PRIORITY OF EXPENSES AND UNSECURED
9 CLAIMS.—

10 (1) IN GENERAL.—Unsecured claims against a
11 covered financial company, or the receiver for such
12 covered financial company under this section, that
13 are proven to the satisfaction of the receiver shall
14 have priority in the following order:

15 (A) Administrative expenses of the re-
16 ceiver.

17 (B) Any amounts owed to the United
18 States, unless the United States agrees or con-
19 sents otherwise.

20 (C) Wages, salaries, or commissions, in-
21 cluding vacation, severance, and sick leave pay
22 earned by an individual (other than manage-
23 ment responsible for the failed condition of the
24 covered financial company who have been re-
25 moved), subject to the limitations for such pay-

1 ments contained in title 11, United States
2 Code, including the amount (11 U.S.C.
3 507(a)(4)) and restrictions on severance pay-
4 ments to insiders (11 U.S.C. 503(c)).

5 (D) Contributions to employee benefit
6 plans, subject to the limitations in title 11,
7 United States Code (11 U.S.C. 507(a)(5)).

8 (E) Any other general or senior liability of
9 the covered financial company (which is not a
10 liability described under subparagraph (F) or
11 (G)).

12 (F) Any obligation subordinated to general
13 creditors (which is not an obligation described
14 under subparagraph (G)).

15 (G) Any obligation to shareholders, mem-
16 bers, general partners, limited partners or other
17 persons with interests in the equity of the cov-
18 ered financial company arising as a result of
19 their status as shareholders, members, general
20 partners, limited partners or other persons with
21 interests in the equity of the covered financial
22 company.

23 (2) POST-RECEIVERSHIP FINANCING PRI-
24 ORITY.—In the event that the Corporation as re-
25 ceiver is unable to obtain unsecured credit for the

1 covered financial company from commercial sources,
2 the Corporation as receiver may obtain credit or
3 incur debt on the part of the covered financial com-
4 pany which shall have priority over any or all admin-
5 istrative expenses of the receiver under paragraph
6 (1)(A).

7 (3) CLAIMS OF THE UNITED STATES.—Unse-
8 cured claims of the United States shall, at a min-
9 imum, have a higher priority than liabilities of the
10 covered financial company that count as regulatory
11 capital.

12 (4) CREDITORS SIMILARLY SITUATED.—Subject
13 to the priorities established under paragraphs (2)
14 and (3), all claimants of a covered financial company
15 that are similarly situated under paragraph (1) shall
16 be treated in a similar manner, except that the re-
17 ceiver may take any action (including making pay-
18 ments) that does not comply with this subsection,
19 if—

20 (A) the Corporation determines that such
21 action is necessary to maximize the value of the
22 assets of the covered financial company, to
23 maximize the present value return from the sale
24 or other disposition of the assets of the covered
25 financial company, to minimize the amount of

1 any loss realized upon the sale or other disposi-
2 tion of the assets of the covered financial com-
3 pany, or to contain or address serious adverse
4 effects on financial stability or the U.S. econ-
5 omy; and

6 (B) all claimants that are similarly situ-
7 ated under paragraph (1) receive not less than
8 the amount provided in subsection (d)(2).

9 (5) SECURED CLAIMS UNAFFECTED.—This sub-
10 section shall not affect secured claims, except to the
11 extent that the security is insufficient to satisfy the
12 claim and then only with regard to the difference be-
13 tween the claim and the amount realized from the
14 security.

15 (6) DEFINITIONS.—As used in this subsection,
16 the term “administrative expenses of the receiver”
17 includes—

18 (A) the actual, necessary costs and ex-
19 penses incurred by the receiver in preserving
20 the assets of a covered financial company or liq-
21 uidating or otherwise dissolving the affairs of a
22 covered financial company for which the Cor-
23 poration has been appointed as receiver; and

24 (B) any obligations that the receiver deter-
25 mines are necessary and appropriate to facili-

1 tate the smooth and orderly liquidation or other
2 dissolution of the covered financial company.

3 (7) RULEMAKING.—The Corporation shall,
4 after following the notice and comment rulemaking
5 requirements under the Administrative Procedure
6 Act, prescribe rules to carry out this section.

7 (c) PROVISIONS RELATING TO CONTRACTS ENTERED
8 INTO BEFORE APPOINTMENT OF RECEIVER.—

9 (1) AUTHORITY TO REPUDIATE CONTRACTS.—
10 In addition to any other rights a receiver may have,
11 the Corporation as receiver for any covered financial
12 company may disaffirm or repudiate any contract or
13 lease—

14 (A) to which the covered financial company
15 is a party;

16 (B) the performance of which the receiver,
17 in the receiver's discretion, determines to be
18 burdensome; and

19 (C) the disaffirmance or repudiation of
20 which the receiver determines, in the receiver's
21 discretion, will promote the orderly administra-
22 tion of the covered financial company's affairs.

23 (2) TIMING OF REPUDIATION.—The receiver
24 appointed for any covered financial company under
25 section 1604 shall determine whether or not to exer-

1 cise the rights of repudiation under this subsection
2 within a reasonable period following such appoint-
3 ment.

4 (3) CLAIMS FOR DAMAGES FOR REPUDI-
5 ATION.—

6 (A) IN GENERAL.—Except as otherwise
7 provided in subparagraph (C) and paragraphs
8 (4), (5), and (6), the liability of the receiver for
9 the disaffirmance or repudiation of any contract
10 pursuant to paragraph (1) shall be—

11 (i) limited to actual direct compen-
12 satory damages; and

13 (ii) determined as of—

14 (I) the date of the appointment
15 of the receiver; or

16 (II) in the case of any contract
17 or agreement referred to in paragraph
18 (8), the date of the disaffirmance or
19 repudiation of such contract or agree-
20 ment.

21 (B) NO LIABILITY FOR OTHER DAM-
22 AGES.—For purposes of subparagraph (A), the
23 term “actual direct compensatory damages”
24 does not include—

25 (i) punitive or exemplary damages;

1 (ii) damages for lost profits or oppor-
2 tunity; or

3 (iii) damages for pain and suffering.

4 (C) MEASURE OF DAMAGES FOR REPUDI-
5 ATION OF QUALIFIED FINANCIAL CONTRACTS.—

6 In the case of any qualified financial contract
7 or agreement to which paragraph (8) applies,
8 compensatory damages shall be—

9 (i) deemed to include normal and rea-
10 sonable costs of cover or other reasonable
11 measures of damages utilized in the indus-
12 tries for such contract and agreement
13 claims; and

14 (ii) paid in accordance with this sub-
15 section and subsection (d) except as other-
16 wise specifically provided in this sub-
17 section.

18 (4) LEASES UNDER WHICH THE COVERED FI-
19 NANCIAL COMPANY IS THE LESSEE.—

20 (A) IN GENERAL.—If the receiver dis-
21 affirms or repudiates a lease under which the
22 covered financial company was the lessee, the
23 receiver shall not be liable for any damages
24 (other than damages determined pursuant to

1 subparagraph (B)) for the disaffirmance or re-
2 pudiation of such lease.

3 (B) PAYMENTS OF RENT.—Notwith-
4 standing subparagraph (A), the lessor under a
5 lease to which such subparagraph applies
6 shall—

7 (i) be entitled to the contractual rent
8 accruing before the later of the date—

9 (I) the notice of disaffirmance or
10 repudiation is mailed; or

11 (II) the disaffirmance or repudi-
12 ation becomes effective, unless the les-
13 sor is in default or breach of the
14 terms of the lease;

15 (ii) have no claim for damages under
16 any acceleration clause or other penalty
17 provision in the lease; and

18 (iii) have a claim for any unpaid rent,
19 subject to all appropriate offsets and de-
20 fenses, due as of the date of the appoint-
21 ment which shall be paid in accordance
22 with this subsection and subsection (d).

23 (5) LEASES UNDER WHICH THE COVERED FI-
24 NANCIAL COMPANY IS THE LESSOR.—

1 (A) IN GENERAL.—If the receiver repudi-
2 ates an unexpired written lease of real property
3 of the covered financial company under which
4 the covered financial company is the lessor and
5 the lessee is not, as of the date of such repudi-
6 ation, in default, the lessee under such lease
7 may either—

8 (i) treat the lease as terminated by
9 such repudiation; or

10 (ii) remain in possession of the lease-
11 hold interest for the balance of the term of
12 the lease unless the lessee defaults under
13 the terms of the lease after the date of
14 such repudiation.

15 (B) PROVISIONS APPLICABLE TO LESSEE
16 REMAINING IN POSSESSION.—If any lessee
17 under a lease described in subparagraph (A) re-
18 mains in possession of a leasehold interest pur-
19 suant to clause (ii) of such subparagraph—

20 (i) the lessee—

21 (I) shall continue to pay the con-
22 tractual rent pursuant to the terms of
23 the lease after the date of the repudi-
24 ation of such lease;

1 (II) may offset against any rent
2 payment which accrues after the date
3 of the repudiation of the lease, any
4 damages which accrue after such date
5 due to the nonperformance of any ob-
6 ligation of the covered financial com-
7 pany under the lease after such date;
8 and

9 (ii) the receiver shall not be liable to
10 the lessee for any damages arising after
11 such date as a result of the repudiation
12 other than the amount of any offset al-
13 lowed under clause (i)(II).

14 (6) CONTRACTS FOR THE SALE OF REAL PROP-
15 ERTY.—

16 (A) IN GENERAL.—If the receiver repudi-
17 ates any contract (which meets the require-
18 ments of subsection (a)(7)) for the sale of real
19 property and the purchaser of such real prop-
20 erty under such contract is in possession and is
21 not, as of the date of such repudiation, in de-
22 fault, such purchaser may either—

23 (i) treat the contract as terminated by
24 such repudiation; or

1 (ii) remain in possession of such real
2 property.

3 (B) PROVISIONS APPLICABLE TO PUR-
4 CHASER REMAINING IN POSSESSION.—If any
5 purchaser of real property under any contract
6 described in subparagraph (A) remains in pos-
7 session of such property pursuant to clause (ii)
8 of such subparagraph—

9 (i) the purchaser—

10 (I) shall continue to make all
11 payments due under the contract after
12 the date of the repudiation of the con-
13 tract; and

14 (II) may offset against any such
15 payments any damages which accrue
16 after such date due to the non-
17 performance (after such date) of any
18 obligation of the covered financial
19 company under the contract; and

20 (ii) the receiver shall—

21 (I) not be liable to the purchaser
22 for any damages arising after such
23 date as a result of the repudiation
24 other than the amount of any offset
25 allowed under clause (i)(II);

1 (II) deliver title to the purchaser
2 in accordance with the provisions of
3 the contract; and

4 (III) have no obligation under
5 the contract other than the perform-
6 ance required under subclause (II).

7 (C) ASSIGNMENT AND SALE ALLOWED.—

8 (i) IN GENERAL.—No provision of this
9 paragraph shall be construed as limiting
10 the right of the receiver to assign the con-
11 tract described in subparagraph (A) and
12 sell the property subject to the contract
13 and the provisions of this paragraph.

14 (ii) NO LIABILITY AFTER ASSIGNMENT
15 AND SALE.—If an assignment and sale de-
16 scribed in clause (i) is consummated, the
17 receiver shall have no further liability
18 under the contract described in subpara-
19 graph (A) or with respect to the real prop-
20 erty which was the subject of such con-
21 tract.

22 (7) PROVISIONS APPLICABLE TO SERVICE CON-
23 TRACTS.—

24 (A) SERVICES PERFORMED BEFORE AP-
25 POINTMENT.—In the case of any contract for

1 services between any person and any covered fi-
2 nancial company for which the Corporation has
3 been appointed receiver, any claim of such per-
4 son for services performed before the appoint-
5 ment of the receiver shall be—

6 (i) a claim to be paid in accordance
7 with subsections (a), (b), and (d); and

8 (ii) deemed to have arisen as of the
9 date the receiver was appointed.

10 (B) SERVICES PERFORMED AFTER AP-
11 POINTMENT AND PRIOR TO REPUDIATION.—If,
12 in the case of any contract for services de-
13 scribed in subparagraph (A), the receiver ac-
14 cepts performance by the other person before
15 the receiver makes any determination to exer-
16 cise the right of repudiation of such contract
17 under this section—

18 (i) the other party shall be paid under
19 the terms of the contract for the services
20 performed; and

21 (ii) the amount of such payment shall
22 be treated as an administrative expense of
23 the receivership.

24 (C) ACCEPTANCE OF PERFORMANCE NO
25 BAR TO SUBSEQUENT REPUDIATION.—The ac-

1 ceptance by any receiver of services referred to
2 in subparagraph (B) in connection with a con-
3 tract described in such subparagraph shall not
4 affect the right of the receiver to repudiate such
5 contract under this section at any time after
6 such performance.

7 (8) CERTAIN QUALIFIED FINANCIAL CON-
8 TRACTS.—

9 (A) RIGHTS OF PARTIES TO CONTRACTS.—

10 Subject to paragraphs (9) and (10) of this sub-
11 section and notwithstanding any other provision
12 of this section (other than subsection (a)(7)),
13 any other Federal law, or the law of any State,
14 no person shall be stayed or prohibited from ex-
15 ercising—

16 (i) any right such person has to cause
17 the termination, liquidation, or acceleration
18 of any qualified financial contract with a
19 covered financial company which arises
20 upon the appointment of the Corporation
21 as receiver for such covered financial com-
22 pany at any time after such appointment;

23 (ii) any right under any security
24 agreement or arrangement or other credit
25 enhancement related to one or more quali-

1 fied financial contracts described in clause
2 (i);

3 (iii) any right to offset or net out any
4 termination value, payment amount, or
5 other transfer obligation arising under or
6 in connection with 1 or more contracts and
7 agreements described in clause (i), includ-
8 ing any master agreement for such con-
9 tracts or agreements.

10 (B) APPLICABILITY OF OTHER PROVI-
11 SIONS.—Subsection (a)(9) shall apply in the
12 case of any judicial action or proceeding
13 brought against any receiver referred to in sub-
14 paragraph (A), or the covered financial com-
15 pany for which such receiver was appointed, by
16 any party to a contract or agreement described
17 in subparagraph (A)(i) with such company.

18 (C) CERTAIN TRANSFERS NOT AVOID-
19 ABLE.—

20 (i) IN GENERAL.—Notwithstanding
21 paragraph (11), section 5242 of the Re-
22 vised Statutes of the United States or any
23 other provision of Federal or State law re-
24 lating to the avoidance of preferential or
25 fraudulent transfers, the Corporation,

1 whether acting as such or as receiver of a
2 covered financial company, may not avoid
3 any transfer of money or other property in
4 connection with any qualified financial con-
5 tract with a covered financial company.

6 (ii) EXCEPTION FOR CERTAIN TRANS-
7 FERS.—Clause (i) shall not apply to any
8 transfer of money or other property in con-
9 nection with any qualified financial con-
10 tract with a covered financial company if
11 the Corporation determines that the trans-
12 feree had actual intent to hinder, delay, or
13 defraud such company, the creditors of
14 such company, or any receiver appointed
15 for such company.

16 (D) CERTAIN CONTACTS AND AGREE-
17 MENTS DEFINED.—For purposes of this sub-
18 section, the following definitions shall apply:

19 (i) QUALIFIED FINANCIAL CON-
20 TRACT.—The term “qualified financial
21 contract” means any securities contract,
22 commodity contract, forward contract, re-
23 purchase agreement, swap agreement, and
24 any similar agreement that the Corpora-
25 tion determines by regulation, resolution,

1 or order to be a qualified financial contract
2 for purposes of this paragraph.

3 (ii) SECURITIES CONTRACT.—The
4 term “securities contract”—

5 (I) means a contract for the pur-
6 chase, sale, or loan of a security, a
7 certificate of deposit, a mortgage loan,
8 any interest in a mortgage loan, a
9 group or index of securities, certifi-
10 cates of deposit, or mortgage loans or
11 interests therein (including any inter-
12 est therein or based on the value
13 thereof) or any option on any of the
14 foregoing, including any option to
15 purchase or sell any such security,
16 certificate of deposit, mortgage loan,
17 interest, group or index, or option,
18 and including any repurchase or re-
19 verse repurchase transaction on any
20 such security, certificate of deposit,
21 mortgage loan, interest, group or
22 index, or option (whether or not such
23 repurchase or reverse repurchase
24 transaction is a “repurchase agree-
25 ment,” as defined in clause (v));

1 (II) does not include any pur-
2 chase, sale, or repurchase obligation
3 under a participation in a commercial
4 mortgage loan unless the Corporation
5 determines by regulation, resolution,
6 or order to include any such agree-
7 ment within the meaning of such
8 term;

9 (III) means any option entered
10 into on a national securities exchange
11 relating to foreign currencies;

12 (IV) means the guarantee (in-
13 cluding by novation) by or to any se-
14 curities clearing agency of any settle-
15 ment of cash, securities, certificates of
16 deposit, mortgage loans or interests
17 therein, group or index of securities,
18 certificates of deposit or mortgage
19 loans or interests therein (including
20 any interest therein or based on the
21 value thereof) or option on any of the
22 foregoing, including any option to
23 purchase or sell any such security,
24 certificate of deposit, mortgage loan,
25 interest, group or index, or option

1 (whether or not such settlement is in
2 connection with any agreement or
3 transaction referred to in subclauses
4 (I) through (XII) (other than sub-
5 clause (II));

6 (V) means any margin loan;

7 (VI) means any extension of
8 credit for the clearance or settlement
9 of securities transactions;

10 (VII) means any loan transaction
11 coupled with a securities collar trans-
12 action, any prepaid securities forward
13 transaction, or any total return swap
14 transaction coupled with a securities
15 sale transaction;

16 (VIII) means any other agree-
17 ment or transaction that is similar to
18 any agreement or transaction referred
19 to in this clause;

20 (IX) means any combination of
21 the agreements or transactions re-
22 ferred to in this clause;

23 (X) means any option to enter
24 into any agreement or transaction re-
25 ferred to in this clause;

1 (XI) means a master agreement
2 that provides for an agreement or
3 transaction referred to in subclause
4 (I), (III), (IV), (V), (VI), (VII),
5 (VIII), (IX), or (X), together with all
6 supplements to any such master
7 agreement, without regard to whether
8 the master agreement provides for an
9 agreement or transaction that is not a
10 securities contract under this clause,
11 except that the master agreement
12 shall be considered to be a securities
13 contract under this clause only with
14 respect to each agreement or trans-
15 action under the master agreement
16 that is referred to in subclause (I),
17 (III), (IV), (V), (VI), (VII), (VIII),
18 (IX), or (X); and

19 (XII) means any security agree-
20 ment or arrangement or other credit
21 enhancement related to any agree-
22 ment or transaction referred to in this
23 clause, including any guarantee or re-
24 imbursement obligation in connection

1 with any agreement or transaction re-
2 ferred to in this clause.

3 (iii) COMMODITY CONTRACT.—The
4 term “commodity contract” means—

5 (I) with respect to a futures com-
6 mission merchant, a contract for the
7 purchase or sale of a commodity for
8 future delivery on, or subject to the
9 rules of, a contract market or board
10 of trade;

11 (II) with respect to a foreign fu-
12 tures commission merchant, a foreign
13 future;

14 (III) with respect to a leverage
15 transaction merchant, a leverage
16 transaction;

17 (IV) with respect to a clearing
18 organization, a contract for the pur-
19 chase or sale of a commodity for fu-
20 ture delivery on, or subject to the
21 rules of, a contract market or board
22 of trade that is cleared by such clear-
23 ing organization, or commodity option
24 traded on, or subject to the rules of,
25 a contract market or board of trade

1 that is cleared by such clearing orga-
2 nization;

3 (V) with respect to a commodity
4 options dealer, a commodity option;

5 (VI) any other agreement or
6 transaction that is similar to any
7 agreement or transaction referred to
8 in this clause;

9 (VII) any combination of the
10 agreements or transactions referred to
11 in this clause;

12 (VIII) any option to enter into
13 any agreement or transaction referred
14 to in this clause;

15 (IX) a master agreement that
16 provides for an agreement or trans-
17 action referred to in subclause (I),
18 (II), (III), (IV), (V), (VI), (VII), or
19 (VIII), together with all supplements
20 to any such master agreement, with-
21 out regard to whether the master
22 agreement provides for an agreement
23 or transaction that is not a com-
24 modity contract under this clause, ex-
25 cept that the master agreement shall

1 be considered to be a commodity con-
2 tract under this clause only with re-
3 spect to each agreement or trans-
4 action under the master agreement
5 that is referred to in subclause (I),
6 (II), (III), (IV), (V), (VI), (VII), or
7 (VIII); or

8 (X) any security agreement or
9 arrangement or other credit enhance-
10 ment related to any agreement or
11 transaction referred to in this clause,
12 including any guarantee or reimburse-
13 ment obligation in connection with
14 any agreement or transaction referred
15 to in this clause.

16 (iv) FORWARD CONTRACT.—The term
17 “forward contract” means—

18 (I) a contract (other than a com-
19 modity contract) for the purchase,
20 sale, or transfer of a commodity or
21 any similar good, article, service,
22 right, or interest which is presently or
23 in the future becomes the subject of
24 dealing in the forward contract trade,
25 or product or byproduct thereof, with

1 a maturity date more than 2 days
2 after the date the contract is entered
3 into, including a repurchase or reverse
4 repurchase transaction (whether or
5 not such repurchase or reverse repur-
6 chase transaction is a “repurchase
7 agreement”, as defined in clause (v)),
8 consignment, lease, swap, hedge
9 transaction, deposit, loan, option, allo-
10 cated transaction, unallocated trans-
11 action, or any other similar agree-
12 ment;

13 (II) any combination of agree-
14 ments or transactions referred to in
15 subclauses (I) and (III);

16 (III) any option to enter into any
17 agreement or transaction referred to
18 in subclause (I) or (II);

19 (IV) a master agreement that
20 provides for an agreement or trans-
21 action referred to in subclauses (I),
22 (II), or (III), together with all supple-
23 ments to any such master agreement,
24 without regard to whether the master
25 agreement provides for an agreement

1 or transaction that is not a forward
2 contract under this clause, except that
3 the master agreement shall be consid-
4 ered to be a forward contract under
5 this clause only with respect to each
6 agreement or transaction under the
7 master agreement that is referred to
8 in subclause (I), (II), or (III); or

9 (V) any security agreement or ar-
10 rangement or other credit enhance-
11 ment related to any agreement or
12 transaction referred to in subclause
13 (I), (II), (III), or (IV), including any
14 guarantee or reimbursement obliga-
15 tion in connection with any agreement
16 or transaction referred to in any such
17 subclause.

18 (v) REPURCHASE AGREEMENT.—The
19 term “repurchase agreement” (which defi-
20 nition also applies to a reverse repurchase
21 agreement)—

22 (I) means an agreement, includ-
23 ing related terms, which provides for
24 the transfer of one or more certifi-
25 cates of deposit, mortgage-related se-

1 curities (as such term is defined in
2 the Securities Exchange Act of 1934),
3 mortgage loans, interests in mortgage-
4 related securities or mortgage loans,
5 eligible bankers' acceptances, qualified
6 foreign government securities (which
7 for purposes of this clause shall mean
8 a security that is a direct obligation
9 of, or that is fully guaranteed by, the
10 central government of a member of
11 the Organization for Economic Co-
12 operation and Development as deter-
13 mined by regulation or order adopted
14 by the Federal Reserve Board) or se-
15 curities that are direct obligations of,
16 or that are fully guaranteed by, the
17 United States or any agency of the
18 United States against the transfer of
19 funds by the transferee of such certifi-
20 cates of deposit, eligible bankers' ac-
21 ceptances, securities, mortgage loans,
22 or interests with a simultaneous
23 agreement by such transferee to
24 transfer to the transferor thereof cer-
25 tificates of deposit, eligible bankers'

1 acceptances, securities, mortgage
2 loans, or interests as described above,
3 at a date certain not later than 1 year
4 after such transfers or on demand,
5 against the transfer of funds, or any
6 other similar agreement;

7 (II) does not include any repur-
8 chase obligation under a participation
9 in a commercial mortgage loan unless
10 the Corporation determines by regula-
11 tion, resolution, or order to include
12 any such participation within the
13 meaning of such term;

14 (III) means any combination of
15 agreements or transactions referred to
16 in subclauses (I) and (IV);

17 (IV) means any option to enter
18 into any agreement or transaction re-
19 ferred to in subclause (I) or (III);

20 (V) means a master agreement
21 that provides for an agreement or
22 transaction referred to in subclause
23 (I), (III), or (IV), together with all
24 supplements to any such master
25 agreement, without regard to whether

1 the master agreement provides for an
2 agreement or transaction that is not a
3 repurchase agreement under this
4 clause, except that the master agree-
5 ment shall be considered to be a re-
6 purchase agreement under this sub-
7 clause only with respect to each agree-
8 ment or transaction under the master
9 agreement that is referred to in sub-
10 clause (I), (III), or (IV); and

11 (VI) means any security agree-
12 ment or arrangement or other credit
13 enhancement related to any agree-
14 ment or transaction referred to in
15 subclause (I), (III), (IV), or (V), in-
16 cluding any guarantee or reimburse-
17 ment obligation in connection with
18 any agreement or transaction referred
19 to in any such subclause.

20 (vi) SWAP AGREEMENT.—The term
21 “swap agreement” means—

22 (I) any agreement, including the
23 terms and conditions incorporated by
24 reference in any such agreement,
25 which is an interest rate swap, option,

1 future, or forward agreement, includ-
2 ing a rate floor, rate cap, rate collar,
3 cross-currency rate swap, and basis
4 swap; a spot, same day-tomorrow, to-
5 morrow-next, forward, or other for-
6 eign exchange, precious metals, or
7 other commodity agreement; a cur-
8 rency swap, option, future, or forward
9 agreement; an equity index or equity
10 swap, option, future, or forward
11 agreement; a debt index or debt swap,
12 option, future, or forward agreement;
13 a total return, credit spread or credit
14 swap, option, future, or forward
15 agreement; a commodity index or
16 commodity swap, option, future, or
17 forward agreement; weather swap, op-
18 tion, future, or forward agreement; an
19 emissions swap, option, future, or for-
20 ward agreement; or an inflation swap,
21 option, future, or forward agreement;

22 (II) any agreement or transaction
23 that is similar to any other agreement
24 or transaction referred to in this
25 clause and that is of a type that has

1 been, is presently, or in the future be-
2 comes, the subject of recurrent deal-
3 ings in the swap or other derivatives
4 markets (including terms and condi-
5 tions incorporated by reference in
6 such agreement) and that is a for-
7 ward, swap, future, option or spot
8 transaction on one or more rates, cur-
9 rencies, commodities, equity securities
10 or other equity instruments, debt se-
11 curities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial risk or value;

19 (III) any combination of agree-
20 ments or transactions referred to in
21 this clause;

22 (IV) any option to enter into any
23 agreement or transaction referred to
24 in this clause;

1 (V) a master agreement that pro-
2 vides for an agreement or transaction
3 referred to in subclause (I), (II), (III),
4 or (IV), together with all supplements
5 to any such master agreement, with-
6 out regard to whether the master
7 agreement contains an agreement or
8 transaction that is not a swap agree-
9 ment under this clause, except that
10 the master agreement shall be consid-
11 ered to be a swap agreement under
12 this clause only with respect to each
13 agreement or transaction under the
14 master agreement that is referred to
15 in subclause (I), (II), (III), or (IV);
16 and

17 (VI) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreements or
20 transactions referred to in subclause
21 (I), (II), (III), (IV), or (V), including
22 any guarantee or reimbursement obli-
23 gation in connection with any agree-
24 ment or transaction referred to in any
25 such subclause.

1 (vii) DEFINITIONS RELATING TO DE-
2 FAULT.—When used in this paragraph and
3 paragraph (10)—

4 (I) The term “default” shall
5 mean, with respect to a covered finan-
6 cial company, any adjudication or
7 other official determination by any
8 court of competent jurisdiction, or
9 other public authority pursuant to
10 which a conservator, receiver, or other
11 legal custodian is appointed; and

12 (II) The term “in danger of de-
13 fault” shall mean a covered financial
14 company with respect to which the
15 Corporation or appropriate State au-
16 thority has determined that—

17 (aa) in the opinion of the
18 Corporation or such authority—

19 (AA) the covered finan-
20 cial company is not likely to
21 be able to pay its obligations
22 in the normal course of busi-
23 ness; and

24 (BB) there is no rea-
25 sonable prospect that the

1 covered financial company
2 will be able to pay such obli-
3 gations without Federal as-
4 sistance; or

5 (CC) in the opinion of
6 the Corporation or such au-
7 thority—

8 (bb) the covered financial
9 company has incurred or is likely
10 to incur losses that will deplete
11 all or substantially all of its cap-
12 ital; and

13 (cc) there is no reasonable
14 prospect that the capital will be
15 replenished without Federal as-
16 sistance.

17 (viii) TREATMENT OF MASTER AGREE-
18 MENT AS ONE AGREEMENT.—Any master
19 agreement for any contract or agreement
20 described in any preceding clause of this
21 subparagraph (or any master agreement
22 for such master agreement or agreements),
23 together with all supplements to such mas-
24 ter agreement, shall be treated as a single
25 agreement and a single qualified financial

1 contact. If a master agreement contains
2 provisions relating to agreements or trans-
3 actions that are not themselves qualified fi-
4 nancial contracts, the master agreement
5 shall be deemed to be a qualified financial
6 contract only with respect to those trans-
7 actions that are themselves qualified finan-
8 cial contracts.

9 (ix) TRANSFER.—The term “transfer”
10 means every mode, direct or indirect, abso-
11 lute or conditional, voluntary or involun-
12 tary, of disposing of or parting with prop-
13 erty or with an interest in property, includ-
14 ing retention of title as a security interest
15 and foreclosure of the covered financial
16 company’s equity of redemption.

17 (x) PERSON.—The term “person” in-
18 cludes any governmental entity in addition
19 to any entity included in the definition of
20 such term in section 1, title 1, United
21 States Code.

22 (E) CLARIFICATION.—No provision of law
23 shall be construed as limiting the right or
24 power of the Corporation, or authorizing any
25 court or agency to limit or delay, in any man-

ner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been

1 transferred pursuant to paragraph
2 (10)(A); or

3 (II) 5:00 p.m. (eastern time) on
4 the business day following the date of
5 the appointment of the receiver.

6 (iii) WALKAWAY CLAUSE DEFINED.—

7 For purposes of this subparagraph, the
8 term “walkaway clause” means any provi-
9 sion in a qualified financial contract that
10 suspends, conditions, or extinguishes a
11 payment obligation of a party, in whole or
12 in part, or does not create a payment obli-
13 gation of a party that would otherwise
14 exist, solely because of such party’s status
15 as a nondefaulting party in connection
16 with the insolvency of a covered financial
17 company that is a party to the contract or
18 the appointment of or the exercise of rights
19 or powers by a receiver of such covered fi-
20 nancial company, and not as a result of a
21 party’s exercise of any right to offset,
22 setoff, or net obligations that exist under
23 the contract, any other contract between
24 those parties, or applicable law.

1 (G) RECORDKEEPING.—The Corporation,
2 in consultation with the Federal Reserve Board,
3 may prescribe regulations requiring that the
4 covered financial company maintain such
5 records with respect to qualified financial con-
6 tracts (including market valuations) as the Cor-
7 poration determines to be necessary or appro-
8 priate in order to assist the receiver of the cov-
9 ered financial company in being able to exercise
10 its rights and fulfill its obligations under this
11 paragraph or paragraph (9) or (10).

12 (9) TRANSFER OF QUALIFIED FINANCIAL CON-
13 TRACTS.—

14 (A) IN GENERAL.—In making any transfer
15 of assets or liabilities of a covered financial
16 company in default which includes any qualified
17 financial contract, the receiver for such covered
18 financial company shall either—

19 (i) transfer to one financial institu-
20 tion, other than a financial institution for
21 which a conservator, receiver, trustee in
22 bankruptcy, or other legal custodian has
23 been appointed or which is otherwise the
24 subject of a bankruptcy or insolvency pro-
25 ceeding—

1 (I) all qualified financial con-
2 tracts between any person or any af-
3 filiate of such person and the covered
4 financial company in default;

5 (II) all claims of such person or
6 any affiliate of such person against
7 such covered financial company under
8 any such contract (other than any
9 claim which, under the terms of any
10 such contract, is subordinated to the
11 claims of general unsecured creditors
12 of such company);

13 (III) all claims of such covered fi-
14 nancial company against such person
15 or any affiliate of such person under
16 any such contract; and

17 (IV) all property securing or any
18 other credit enhancement for any con-
19 tract described in subclause (I) or any
20 claim described in subclause (II) or
21 (III) under any such contract; or

22 (ii) transfer none of the qualified fi-
23 nancial contracts, claims, property or other
24 credit enhancement referred to in clause (i)

1 (with respect to such person and any affil-
2 iate of such person).

3 (B) TRANSFER TO FOREIGN BANK, FINAN-
4 CIAL INSTITUTION, OR BRANCH OR AGENCY
5 THEREOF.—In transferring any qualified finan-
6 cial contracts and related claims and property
7 under subparagraph (A)(i), the receiver for the
8 covered financial company shall not make such
9 transfer to a foreign bank, financial institution
10 organized under the laws of a foreign country,
11 or a branch or agency of a foreign bank or fi-
12 nancial institution unless, under the law appli-
13 cable to such bank, financial institution, branch
14 or agency, to the qualified financial contracts,
15 and to any netting contract, any security agree-
16 ment or arrangement or other credit enhance-
17 ment related to one or more qualified financial
18 contracts, the contractual rights of the parties
19 to such qualified financial contracts, netting
20 contracts, security agreements or arrangements,
21 or other credit enhancements are enforceable
22 substantially to the same extent as permitted
23 under this section.

24 (C) TRANSFER OF CONTRACTS SUBJECT
25 TO THE RULES OF A CLEARING ORGANIZA-

1 TION.—In the event that a receiver transfers
2 any qualified financial contract and related
3 claims, property, and credit enhancements pur-
4 suant to subparagraph (A)(i) and such contract
5 is cleared by or subject to the rules of a clear-
6 ing organization, the clearing organization shall
7 not be required to accept the transferee as a
8 member by virtue of the transfer.

9 (D) DEFINITIONS.—For purposes of this
10 paragraph, the term “financial institution”
11 means a broker or dealer, a depository institu-
12 tion, a futures commission merchant, a bridge
13 financial company, or any other institution de-
14 termined by the Corporation by regulation to be
15 a financial institution, and the term “clearing
16 organization” has the same meaning as in sec-
17 tion 402 of the Federal Deposit Insurance Cor-
18 poration Improvement Act of 1991.

19 (10) NOTIFICATION OF TRANSFER.—

20 (A) IN GENERAL.—If—

21 (i) the receiver for a covered financial
22 company in default or in danger of default
23 transfers any assets and liabilities of the
24 covered financial company; and

1 (ii) the transfer includes any qualified
2 financial contract,
3 the receiver shall notify any person who is a
4 party to any such contract of such transfer by
5 5:00 p.m. (eastern time) on the business day
6 following the date of the appointment of the re-
7 ceiver.

8 (B) CERTAIN RIGHTS NOT ENFORCE-
9 ABLE.—

10 (i) RECEIVERSHIP.—A person who is
11 a party to a qualified financial contract
12 with a covered financial company may not
13 exercise any right that such person has to
14 terminate, liquidate, or net such contract
15 under paragraph (8)(A) of this subsection
16 solely by reason of or incidental to the ap-
17 pointment under this section of a receiver
18 for the covered financial company (or the
19 insolvency or financial condition of the cov-
20 ered financial company for which the re-
21 ceiver has been appointed)—

22 (I) until 5:00 p.m. (eastern time)
23 on the business day following the date
24 of the appointment of the receiver; or

1 (II) after the person has received
2 notice that the contract has been
3 transferred pursuant to paragraph
4 (9)(A).

5 (ii) NOTICE.—For purposes of this
6 paragraph, the receiver for a covered fi-
7 nancial company shall be deemed to have
8 notified a person who is a party to a quali-
9 fied financial contract with such covered fi-
10 nancial company if the receiver has taken
11 steps reasonably calculated to provide no-
12 tice to such person by the time specified in
13 subparagraph (A).

14 (C) TREATMENT OF BRIDGE FINANCIAL
15 COMPANY.—For purposes of paragraph (9), a
16 bridge financial company shall not be consid-
17 ered to be a financial institution for which a
18 conservator, receiver, trustee in bankruptcy, or
19 other legal custodian has been appointed or
20 which is otherwise the subject of a bankruptcy
21 or insolvency proceeding.

22 (D) BUSINESS DAY DEFINED.—For pur-
23 poses of this paragraph, the term “business
24 day” means any day other than any Saturday,
25 Sunday, or any day on which either the New

1 York Stock Exchange or the Federal Reserve
2 Bank of New York is closed.

3 (11) DISAFFIRMANCE OR REPUDIATION OF
4 QUALIFIED FINANCIAL CONTRACTS.—In exercising
5 the rights of disaffirmance or repudiation of a re-
6 ceiver with respect to any qualified financial contract
7 to which a covered financial company is a party, the
8 receiver for such covered financial shall either—

9 (A) disaffirm or repudiate all qualified fi-
10 nancial contracts between—

11 (i) any person or any affiliate of such
12 person; and

13 (ii) the covered financial company in
14 default; or

15 (B) disaffirm or repudiate none of the
16 qualified financial contracts referred to in sub-
17 paragraph (A) (with respect to such person or
18 any affiliate of such person).

19 (12) CERTAIN SECURITY AND CUSTOMER IN-
20 TERESTS NOT AVOIDABLE.—No provision of this
21 subsection shall be construed as permitting the
22 avoidance of any—

23 (A) legally enforceable or perfected secu-
24 rity interest in any of the assets of any covered
25 financial company except where such an inter-

1 est is taken in contemplation of the company's
2 insolvency or with the intent to hinder, delay, or
3 defraud the company or the creditors of such
4 company; or

5 (B) legally enforceable interest in customer
6 property.

7 (13) AUTHORITY TO ENFORCE CONTRACTS.—

8 (A) IN GENERAL.—The receiver may en-
9 force any contract, other than a director's or of-
10 ficer's liability insurance contract or a financial
11 institution bond, entered into by the covered fi-
12 nancial company notwithstanding any provision
13 of the contract providing for termination, de-
14 fault, acceleration, or exercise of rights upon, or
15 solely by reason of, insolvency or the appoint-
16 ment of or the exercise of rights or powers by
17 a receiver.

18 (B) CERTAIN RIGHTS NOT AFFECTED.—
19 No provision of this paragraph may be con-
20 strued as impairing or affecting any right of the
21 receiver to enforce or recover under a director's
22 or officer's liability insurance contract or finan-
23 cial institution bond under other applicable law.

24 (C) CONSENT REQUIREMENT.—

1 (i) IN GENERAL.—Except as otherwise
2 provided by this section, no person may ex-
3 ercise any right or power to terminate, ac-
4 celerate, or declare a default under any
5 contract to which the covered financial
6 company is a party, or to obtain possession
7 of or exercise control over any property of
8 the covered financial company or affect
9 any contractual rights of the covered finan-
10 cial company, without the consent of the
11 receiver, as appropriate, of the covered fi-
12 nancial company during the 90-day period
13 beginning on the date of the appointment
14 of the receiver, as applicable.

15 (ii) CERTAIN EXCEPTIONS.—No provi-
16 sion of this subparagraph shall apply to a
17 director or officer liability insurance con-
18 tract or a financial institution bond, to the
19 rights of parties to certain qualified finan-
20 cial contracts pursuant to paragraph (8),
21 or to the rights of parties to netting con-
22 tracts pursuant to subtitle A of title IV of
23 the Federal Deposit Insurance Corporation
24 Improvement Act of 1991 (12 U.S.C. 4401
25 et seq.), or shall be construed as permit-

1 ting the receiver to fail to comply with oth-
2 erwise enforceable provisions of such con-
3 tract.

4 (14) EXCEPTION FOR FEDERAL RESERVE
5 BANKS AND CORPORATION SECURITY INTEREST.—

6 No provision of this subsection shall apply with re-
7 spect to—

8 (A) any extension of credit from any Fed-
9 eral Reserve bank or the Corporation to any
10 covered financial company; or

11 (B) any security interest in the assets of
12 the covered financial company securing any
13 such extension of credit.

14 (15) SAVINGS CLAUSE.—The meanings of terms
15 used in this subsection are applicable for purposes of
16 this subsection only, and shall not be construed or
17 applied so as to challenge or affect the characteriza-
18 tion, definition, or treatment of any similar terms
19 under any other statute, regulation, or rule, includ-
20 ing, but not limited, to the Gramm-Leach-Bliley Act,
21 the Legal Certainty for Bank Products Act of 2000,
22 the securities laws (as that term is defined in section
23 3(a)(47) of the Securities Exchange Act of 1934),
24 and the Commodity Exchange Act.

1 (16) AUTHORITY REGARDING COLLECTIVE BAR-
2 GAINING AGREEMENTS.—The Corporation as re-
3 ceiver for any covered financial company shall not
4 disaffirm or repudiate any collective bargaining
5 agreement to which the covered financial company is
6 a party unless the Corporation determines that repu-
7 diation is necessary for the orderly resolution of the
8 covered financial company after taking into consider-
9 ation the cost to taxpayers and the financial stability
10 of the United States.

11 (d) VALUATION OF CLAIMS IN DEFAULT.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of Federal law or the law of any State, and
14 regardless of the method which the Corporation de-
15 termines to utilize with respect to a covered financial
16 company, including transactions authorized under
17 subsection (h), this subsection shall govern the
18 rights of the creditors of such covered financial com-
19 pany.

20 (2) MAXIMUM LIABILITY.—The maximum li-
21 ability of the Corporation, acting as receiver or in
22 any other capacity, to any person having a claim
23 against the receiver or the covered financial com-
24 pany for which such receiver is appointed shall equal
25 the amount such claimant would have received if—

1 (A) a determination had not been made
2 under section 1603(b) with respect to the cov-
3 ered financial company; and

4 (B) the covered financial company had
5 been liquidated under title 11, United States
6 Code, or any case related to title 11, United
7 States Code (including a case initiated by the
8 Securities Investor Protection Corporation with
9 respect to a financial company subject to the
10 Securities Investor Protection Act of 1970), or
11 any State insolvency law.

12 (3) ADDITIONAL PAYMENTS AUTHORIZED.—

13 (A) IN GENERAL.—The Corporation may,
14 as receiver and with the approval of the Sec-
15 retary, make additional payments or credit ad-
16 ditional amounts to or with respect to or for the
17 account of any claimant or category of claim-
18 ants of a covered financial company if the Cor-
19 poration determines that such payments or
20 credits are necessary or appropriate to—

21 (i) minimize losses to the receiver
22 from the dissolution of the covered finan-
23 cial company under this section; or

1 (ii) prevent or mitigate serious ad-
2 verse effects to financial stability or the
3 United States economy.

4 (B) MANNER OF PAYMENT.—The Corpora-
5 tion may make payments or credit amounts
6 under subparagraph (A) directly to the claim-
7 ants or may make such payments or credit such
8 amounts to a company other than a covered fi-
9 nancial company or a bridge financial company
10 established with respect thereto in order to in-
11 duce such other company to accept liability for
12 such claims.

13 (e) LIMITATION ON COURT ACTION.—Except as pro-
14 vided in this section or at the request of the receiver ap-
15 pointed for a covered financial company, no court may
16 take any action to restrain or affect the exercise of powers
17 or functions of the receiver hereunder.

18 (f) LIABILITY OF DIRECTORS AND OFFICERS.—

19 (1) IN GENERAL.—A director or officer of a
20 covered financial company may be held personally
21 liable for monetary damages in any civil action de-
22 scribed in paragraph (2) by, on behalf of, or at the
23 request or direction of the Corporation, which action
24 is prosecuted wholly or partially for the benefit of
25 the Corporation—

1 (A) acting as receiver of such covered fi-
2 nancial company;

3 (B) acting based upon a suit, claim, or
4 cause of action purchased from, assigned by, or
5 otherwise conveyed by such receiver; or

6 (C) acting based upon a suit, claim, or
7 cause of action purchased from, assigned by, or
8 otherwise conveyed in whole or in part by a cov-
9 ered financial company or its affiliate in con-
10 nection with assistance provided under section
11 1604.

12 (2) ACTIONS COVERED.—Paragraph (1) shall
13 apply with respect to actions for gross negligence,
14 including any similar conduct or conduct that dem-
15 onstrates a greater disregard of a duty of care (than
16 gross negligence) including intentional tortious con-
17 duct, as such terms are defined and determined
18 under applicable State law.

19 (3) SAVINGS CLAUSE.—Nothing in this sub-
20 section shall impair or affect any right of the Cor-
21 poration under other applicable law.

22 (g) DAMAGES.—In any proceeding related to any
23 claim against a covered financial company's director, offi-
24 cer, employee, agent, attorney, accountant, appraiser, or
25 any other party employed by or providing services to a

1 covered financial company, recoverable damages deter-
2 mined to result from the improvident or otherwise im-
3 proper use or investment of any covered financial com-
4 pany's assets shall include principal losses and appropriate
5 interest.

6 (h) BRIDGE FINANCIAL COMPANIES.—

7 (1) ORGANIZATION.—

8 (A) PURPOSE.—The Corporation, as re-
9 ceiver of one or more covered financial compa-
10 nies may organize one or more bridge financial
11 companies in accordance with this subsection.

12 (B) AUTHORITIES.—Upon the creation of
13 a bridge financial company under subparagraph
14 (A) with respect to a covered financial com-
15 pany, such bridge financial company may—

16 (i) assume such liabilities (including
17 liabilities associated with any trust or cus-
18 tody business but excluding any liabilities
19 that count as regulatory capital) of such
20 covered financial company as the Corpora-
21 tion may, in its discretion, determine to be
22 appropriate;

23 (ii) purchase such assets (including
24 assets associated with any trust or custody
25 business) of such covered financial com-

pany as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Corporation is appointed as receiver for a covered financial company, the Corporation may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate

1 of a bridge financial shall have such terms as
2 the Corporation may provide, and shall be exe-
3 cuted by such representatives as the Corpora-
4 tion may designate.

5 (D) TERMS OF CHARTER; RIGHTS AND
6 PRIVILEGES.—Subject to and in accordance
7 with the provisions of this subsection, the Cor-
8 poration shall—

9 (i) establish the terms of the charter
10 of a bridge financial company and the
11 rights, powers, authorities and privileges of
12 a bridge financial company granted by the
13 charter or as an incident thereto; and

14 (ii) provide for, and establish the
15 terms and conditions governing, the man-
16 agement (including, but not limited to, the
17 bylaws and the number of directors of the
18 board of directors) and operations of the
19 bridge financial company.

20 (E) TRANSFER OF RIGHTS AND PRIVI-
21 LEGES OF COVERED FINANCIAL COMPANY.—

22 (i) IN GENERAL.—Notwithstanding
23 any other provision of Federal law or the
24 law of any State, the Corporation may pro-
25 vide for a bridge financial company to suc-

1 ceed to and assume any rights, powers, au-
2 thorities or privileges of the covered finan-
3 cial company with respect to which the
4 bridge financial company was established
5 and, upon such determination by the Cor-
6 poration, the bridge financial company
7 shall immediately and by operation of law
8 succeed to and assume such rights, powers,
9 authorities and privileges.

10 (ii) EFFECTIVE WITHOUT AP-
11 PROVAL.—Any succession to or assumption
12 by a bridge financial company of rights,
13 powers, authorities or privileges of a cov-
14 ered financial company under clause (i) or
15 otherwise shall be effective without any
16 further approval under Federal or State
17 law, assignment, or consent with respect
18 thereto.

19 (F) CORPORATE GOVERNANCE AND ELEC-
20 TION AND DESIGNATION OF BODY OF LAW.—To
21 the extent permitted by the Corporation and
22 consistent with this section and any rules, regu-
23 lations or directives issued by the Corporation
24 under this section, a bridge financial company
25 may elect to follow the corporate governance

1 practices and procedures as are applicable to a
2 corporation incorporated under the general cor-
3 poration law of the State of Delaware, or the
4 State of incorporation or organization of the
5 covered financial company with respect to which
6 the bridge financial company was established,
7 as such law may be amended from time to time.

8 (G) CAPITAL.—

9 (i) CAPITAL NOT REQUIRED.—Not-
10 withstanding any other provision of Fed-
11 eral or State law, a bridge financial com-
12 pany may, if permitted by the Corporation,
13 operate without any capital or surplus, or
14 with such capital or surplus as the Cor-
15 poration may in its discretion determine to
16 be appropriate.

17 (ii) NO CONTRIBUTION BY THE COR-
18 PORATION REQUIRED.—The Corporation is
19 not required to pay capital into a bridge fi-
20 nancial company or to issue any capital
21 stock on behalf of a bridge financial com-
22 pany established under this subsection.

23 (iii) AUTHORITY.—If the Corporation
24 determines that such action is advisable,
25 the Corporation may cause capital stock or

1 other securities of a bridge financial com-
2 pany established with respect to a covered
3 financial company to be issued and offered
4 for sale in such amounts and on such
5 terms and conditions as the Corporation
6 may, in its discretion, determine.

7 (3) INTERESTS IN AND ASSETS AND OBLIGA-
8 TIONS OF COVERED FINANCIAL COMPANY.—Notwith-
9 standing paragraph (1) or (2) or any other provision
10 of law—

11 (A) a bridge financial company shall as-
12 sume, acquire, or succeed to the assets or liabil-
13 ities of a covered financial company (including
14 the assets or liabilities associated with any trust
15 or custody business) only to the extent that
16 such assets or liabilities are transferred by the
17 Corporation to the bridge financial company in
18 accordance with, and subject to the restrictions
19 set forth in, paragraph (1)(B); and

20 (B) a bridge financial company shall not
21 assume, acquire, or succeed to any obligation
22 that a covered financial company for which a
23 receiver has been appointed may have to any
24 shareholder, member, general partner, limited
25 partner, or other person with an interest in the

1 equity of the covered financial company that
2 arises as a result of the status of that person
3 having an equity claim in the covered financial
4 company.

5 (4) BRIDGE FINANCIAL COMPANY TREATED AS
6 BEING IN DEFAULT FOR CERTAIN PURPOSES.—A
7 bridge financial company shall be treated as a cov-
8 ered financial company in default at such times and
9 for such purposes as the Corporation may, in its dis-
10 cretion, determine.

11 (5) TRANSFER OF ASSETS AND LIABILITIES.—

12 (A) TRANSFER OF ASSETS AND LIABIL-
13 ITIES.—The Corporation, as receiver, may
14 transfer any assets and liabilities of a covered
15 financial company (including any assets or li-
16 abilities associated with any trust or custody
17 business) to one or more bridge financial com-
18 panies in accordance with and subject to the re-
19 strictions of paragraph (1)(B).

20 (B) SUBSEQUENT TRANSFERS.—At any
21 time after the establishment of a bridge finan-
22 cial company with respect to a covered financial
23 company, the Corporation, as receiver, may
24 transfer any assets and liabilities of such cov-
25 ered financial company as the Corporation may,

1 in its discretion, determine to be appropriate in
2 accordance with and subject to the restrictions
3 of paragraph (1)(B).

4 (C) TREATMENT OF TRUST OR CUSTODY
5 BUSINESS.—For purposes of this paragraph,
6 the trust or custody business, including fidu-
7 ciary appointments, held by any covered finan-
8 cial company is included among its assets and
9 liabilities.

10 (D) EFFECTIVE WITHOUT APPROVAL.—
11 The transfer of any assets or liabilities, includ-
12 ing those associated with any trust or custody
13 business of a covered financial company to a
14 bridge financial company shall be effective with-
15 out any further approval under Federal or
16 State law, assignment, or consent with respect
17 thereto.

18 (E) EQUITABLE TREATMENT OF SIMI-
19 LARLY SITUATED CREDITORS.—The Corpora-
20 tion shall treat all creditors of a covered finan-
21 cial company that are similarly situated under
22 subsection (b)(1) in a similar manner in exer-
23 cising the authority of the Corporation under
24 this subsection to transfer any assets or liabil-
25 ities of the covered financial company to one or

1 more bridge financial companies established
2 with respect to such covered financial company,
3 except that the Corporation may take actions
4 (including making payments) that do not com-
5 ply with this subparagraph, if—

6 (i) the Corporation determines that
7 such actions are necessary to maximize the
8 value of the assets of the covered financial
9 company, to maximize the present value
10 return from the sale or other disposition of
11 the assets of the covered financial com-
12 pany, to minimize the amount of any loss
13 realized upon the sale or other disposition
14 of the assets of the covered financial com-
15 pany, or to contain or address serious ad-
16 verse effects to financial stability or the
17 United States economy; and

18 (ii) all creditors that are similarly sit-
19 uated under subsection (b)(1) receive not
20 less than the amount provided in sub-
21 section (d)(2).

22 (F) LIMITATION ON TRANSFER OF LIABIL-
23 ITIES.—Notwithstanding any other provision of
24 law, the aggregate amount of liabilities of a cov-
25 ered financial company that are transferred to,

1 or assumed by, a bridge financial company from
2 a covered financial company may not exceed the
3 aggregate amount of the assets of the covered
4 financial company that are transferred to, or
5 purchased by, the bridge financial company
6 from the covered financial company.

7 (6) STAY OF JUDICIAL ACTION.—Any judicial
8 action to which a bridge financial company becomes
9 a party by virtue of its acquisition of any assets or
10 assumption of any liabilities of a covered financial
11 company shall be stayed from further proceedings
12 for a period of up to 45 days (or such longer period
13 as may be agreed to upon the consent of all parties)
14 at the request of the bridge financial company.

15 (7) AGREEMENTS AGAINST INTEREST OF THE
16 BRIDGE FINANCIAL COMPANY.—No agreement that
17 tends to diminish or defeat the interest of the bridge
18 financial company in any asset of a covered financial
19 company acquired by the bridge financial company
20 shall be valid against the bridge financial company
21 unless such agreement is in writing and executed by
22 an authorized officer or representative of the covered
23 financial company.

24 (8) NO FEDERAL STATUS.—

1 (A) AGENCY STATUS.—A bridge financial
2 company is not an agency, establishment, or in-
3 strumentality of the United States.

4 (B) EMPLOYEE STATUS.—Representatives
5 for purposes of paragraph (1)(B), directors, of-
6 ficers, employees, or agents of a bridge financial
7 company are not, solely by virtue of service in
8 any such capacity, officers or employees of the
9 United States. Any employee of the Corporation
10 or of any Federal instrumentality who serves at
11 the request of the Corporation as a representa-
12 tive for purposes of paragraph (1)(B), director,
13 officer, employee, or agent of a bridge financial
14 company shall not—

15 (i) solely by virtue of service in any
16 such capacity lose any existing status as
17 an officer or employee of the United States
18 for purposes of title 5, United States Code,
19 or any other provision of law; or

20 (ii) receive any salary or benefits for
21 service in any such capacity with respect to
22 a bridge financial company in addition to
23 such salary or benefits as are obtained
24 through employment with the Corporation
25 or such Federal instrumentality.

1 (9) EXEMPT TAX STATUS.—

2 (A) EXEMPTION FROM FEDERAL INCOME
3 TAX.—Subsection (l) of section 501 of the In-
4 ternal Revenue Code of 1986 is amended by
5 adding at the end the following new paragraph:

6 “(4) Any bridge financial company organized
7 under section 1609(h) of the Financial Stability Im-
8 provement Act of 2009.”.

9 (B) EXEMPTION FROM CERTAIN OTHER
10 TAXES.—Notwithstanding any other provision
11 of Federal or State law, a bridge financial com-
12 pany, its franchise, property, and income shall
13 be exempt from all taxation now or hereafter
14 imposed by any territory, dependency, or pos-
15 session of the United States, or by any State,
16 county, municipality, or local taxing authority.

17 (10) FEDERAL AGENCY APPROVAL; ANTITRUST
18 REVIEW.—

19 (A) IN GENERAL.—If a transaction involv-
20 ing the merger or sale of a bridge financial
21 company requires approval by a Federal agency,
22 the transaction may not be consummated before
23 the 5th calendar day after the date of approval
24 by the Federal agency responsible for such ap-
25 proval with respect thereto. If, in connection

1 with any such approval a report on competitive
2 factors from the Attorney General is required,
3 the Federal agency responsible for such ap-
4 proval shall promptly notify the Attorney Gen-
5 eral of the proposed transaction and the Attor-
6 ney General shall provide the required report
7 within 10 days of the request. If notification
8 under section 7A of the Clayton Act is required
9 with respect to such transaction, then the re-
10 quired waiting period shall end on the 15th day
11 after the date on which the Attorney General
12 and the Federal Trade Commission receive such
13 notification, unless the waiting period is termi-
14 nated earlier under subsection (b)(2) of such
15 section, or is extended pursuant to subsection
16 (e)(2) of such section.

17 (B) EMERGENCY.—If the Secretary, in
18 consultation with the Chairman of the Federal
19 Reserve Board, has found that the Corporation
20 must act immediately to prevent the probable
21 failure of the covered financial company in-
22 volved, the approval and prior notification re-
23 ferred to in subparagraph (A) shall not be re-
24 quired and the transaction may be con-
25 summated immediately by the Corporation. The

preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).

(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (12), (13), and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the

1 bridge financial company to a company other
2 than the Corporation and other than another
3 bridge financial company;

4 (C) the sale of 80 percent, or more, of the
5 capital stock of the bridge financial company to
6 a person other than the Corporation and other
7 than another bridge financial company;

8 (D) at the election of the Corporation, ei-
9 ther the assumption of all or substantially all of
10 the liabilities of the bridge financial company by
11 a company that is not a bridge financial com-
12 pany, or the acquisition of all or substantially
13 all of the assets of the bridge financial company
14 by a company that is not a bridge financial
15 company, or other entity as permitted under
16 applicable law; and

17 (E) the expiration of the period provided in
18 paragraph (11), or the earlier dissolution of the
19 bridge financial company as provided in para-
20 graph (14).

21 (13) EFFECT OF TERMINATION EVENTS.—

22 (A) MERGER OR CONSOLIDATION.—A
23 merger or consolidation as provided in para-
24 graph (12)(A) shall be conducted in accordance
25 with, and shall have the effect provided in, the

1 provisions of applicable law. For the purpose of
2 effecting such a merger or consolidation, the
3 bridge financial company shall be treated as a
4 corporation organized under the laws of the
5 State of Delaware (unless the law of another
6 State has been selected by the bridge financial
7 company in accordance with paragraph (2)(F)),
8 and the Corporation shall be treated as the sole
9 shareholder thereof, notwithstanding any other
10 provision of State or Federal law.

11 (B) CHARTER CONVERSION.—Following
12 the sale of a majority of the capital stock of the
13 bridge financial company as provided in para-
14 graph (12)(B), the Corporation may amend the
15 charter of the bridge financial company to re-
16 flect the termination of the status of the bridge
17 financial company as such, whereupon the com-
18 pany shall have all of the rights, powers, and
19 privileges under its constituent documents and
20 applicable State or Federal law. In connection
21 therewith, the Corporation may take such steps
22 as may be necessary or convenient to reincor-
23 porate the bridge financial company under the
24 laws of a State and, notwithstanding any provi-
25 sions of State or Federal law, such State-char-

1 tered corporation shall be deemed to succeed by
2 operation of law to such rights, titles, powers
3 and interests of the bridge financial company as
4 the Corporation may provide, with the same ef-
5 fect as if the bridge financial company had
6 merged with the State-chartered corporation
7 under provisions of the corporate laws of such
8 State.

9 (C) SALE OF STOCK.—Following the sale
10 of 80 percent or more of the capital stock of a
11 bridge financial company as provided in para-
12 graph (12)(C), the company shall have all of
13 the rights, powers, and privileges under its con-
14 stituent documents and applicable State or Fed-
15 eral law. In connection therewith, the Corpora-
16 tion may take such steps as may be necessary
17 or convenient to reincorporate the bridge finan-
18 cial company under the laws of a State and,
19 notwithstanding any provisions of State or Fed-
20 eral law, the State-chartered corporation shall
21 be deemed to succeed by operation of law to
22 such rights, titles, powers and interests of the
23 bridge financial company as the Corporation
24 may provide, with the same effect as if the
25 bridge financial company had merged with the

1 State-chartered corporation under provisions of
2 the corporate laws of such State.

3 (D) ASSUMPTION OF LIABILITIES AND
4 SALE OF ASSETS.—Following the assumption of
5 all or substantially all of the liabilities of the
6 bridge financial company, or the sale of all or
7 substantially all of the assets of the bridge fi-
8 nancial company, as provided in paragraph
9 (12)(D), at the election of the Corporation the
10 bridge financial company may retain its status
11 as such for the period provided in paragraph
12 (11) or may be dissolved at the election of the
13 Corporation.

14 (E) AMENDMENTS TO CHARTER.—Fol-
15 lowing the consummation of a transaction de-
16 scribed in subparagraph (A), (B), (C), or (D)
17 of paragraph (12), the charter of the resulting
18 company shall be amended to reflect the termi-
19 nation of bridge financial company status, if ap-
20 propriate.

21 (14) DISSOLUTION OF BRIDGE FINANCIAL COM-
22 PANY.—

23 (A) IN GENERAL.—Notwithstanding any
24 other provision of State or Federal law, if a
25 bridge financial company's status as such has

1 not previously been terminated by the occur-
2 rence of an event specified in subparagraph (A),
3 (B), (C), or (D) of paragraph (12)—

4 (i) the Corporation may, in its discre-
5 tion, dissolve the bridge financial company
6 in accordance with this paragraph at any
7 time; and

8 (ii) the Corporation shall promptly
9 commence dissolution proceedings in ac-
10 cordance with this paragraph upon the ex-
11 piration of the 2-year period following the
12 date the bridge financial company was
13 chartered, or any extension thereof, as pro-
14 vided in paragraph (11).

15 (B) PROCEDURES.—The Corporation shall
16 remain the receiver of a bridge financial com-
17 pany for the purpose of dissolving the bridge fi-
18 nancial company. The Corporation as such re-
19 ceiver shall wind up the affairs of the bridge fi-
20 nancial company in conformity with the provi-
21 sions of law relating to the liquidation of cov-
22 ered financial companies. With respect to any
23 such bridge financial company, the Corporation
24 as receiver shall have all the rights, powers, and
25 privileges and shall perform the duties related

1 to the exercise of such rights, powers, or privi-
2 leges granted by law to a receiver of a covered
3 financial company and, notwithstanding any
4 other provision of law, in the exercise of such
5 rights, powers, and privileges the Corporation
6 shall not be subject to the direction or super-
7 vision of any State agency or other Federal
8 agency.

9 (15) AUTHORITY TO OBTAIN CREDIT.—

10 (A) IN GENERAL.—A bridge financial com-
11 pany may obtain unsecured credit and issue un-
12 secured debt.

13 (B) INABILITY TO OBTAIN CREDIT.—If a
14 bridge financial company is unable to obtain
15 unsecured credit or issue unsecured debt, the
16 Corporation may authorize the obtaining of
17 credit or the issuance of debt by the bridge fi-
18 nancial company—

19 (i) with priority over any or all of the
20 obligations of the bridge financial com-
21 pany;

22 (ii) secured by a lien on property of
23 the bridge financial company that is not
24 otherwise subject to a lien; or

1 (iii) secured by a junior lien on prop-
2 erty of the bridge financial company that
3 is subject to a lien.

4 (C) LIMITATIONS.—

5 (i) IN GENERAL.—The Corporation,
6 after notice and a hearing, may authorize
7 the obtaining of credit or the issuance of
8 debt by a bridge financial company that is
9 secured by a senior or equal lien on prop-
10 erty of the bridge financial company that
11 is subject to a lien only if—

12 (I) the bridge financial company
13 is unable to otherwise obtain such
14 credit or issue such debt; and

15 (II) there is adequate protection
16 of the interest of the holder of the lien
17 on the property with respect to which
18 such senior or equal lien is proposed
19 to be granted.

20 (D) BURDEN OF PROOF.—In any hearing
21 under this subsection, the Corporation has the
22 burden of proof on the issue of adequate protec-
23 tion.

24 (16) EFFECT ON DEBTS AND LIENS.—The re-
25 versal or modification on appeal of an authorization

1 under this subsection to obtain credit or issue debt,
2 or of a grant under this section of a priority or a
3 lien, does not affect the validity of any debt so
4 issued, or any priority or lien so granted, to an enti-
5 ty that extended such credit in good faith, whether
6 or not such entity knew of the pendency of the ap-
7 peal, unless such authorization and the issuance of
8 such debt, or the granting of such priority or lien,
9 were stayed pending appeal.

10 (i) SHARING RECORDS.—Whenever the Corporation
11 has been appointed as receiver for a covered financial com-
12 pany, the Federal Reserve Board and the company’s pri-
13 mary appropriate regulatory agency, if any, shall each
14 make all records relating to the company available to the
15 receiver which may be used by the receiver in any manner
16 the receiver determines to be appropriate.

17 (j) EXPEDITED PROCEDURES FOR CERTAIN
18 CLAIMS.—

19 (1) TIME FOR FILING NOTICE OF APPEAL.—

20 The notice of appeal of any order, whether interlocu-
21 tory or final, entered in any case brought by the
22 Corporation against a covered financial company’s
23 director, officer, employee, agent, attorney, account-
24 ant, or appraiser or any other person employed by
25 or providing services to a covered financial company

1 shall be filed not later than 30 days after the date
2 of entry of the order. The hearing of the appeal shall
3 be held not later than 120 days after the date of the
4 notice of appeal. The appeal shall be decided not
5 later than 180 days after the date of the notice of
6 appeal.

7 (2) SCHEDULING.—A court of the United
8 States shall expedite the consideration of any case
9 brought by the Corporation against a covered finan-
10 cial company's director, officer, employee, agent, at-
11 torney, accountant, or appraiser or any other person
12 employed by or providing services to a covered finan-
13 cial company. As far as practicable, the court shall
14 give such case priority on its docket.

15 (3) JUDICIAL DISCRETION.—The court may
16 modify the schedule and limitations stated in para-
17 graphs (1) and (2) in a particular case, based on a
18 specific finding that the ends of justice that would
19 be served by making such a modification would out-
20 weigh the best interest of the public in having the
21 case resolved expeditiously.

22 (k) FOREIGN INVESTIGATIONS.—The Corporation, as
23 receiver of any covered financial company and for pur-
24 poses of carrying out any power, authority, or duty with
25 respect to a covered financial company—

1 (1) may request the assistance of any foreign fi-
2 nancial authority and provide assistance to any for-
3 eign financial authority in accordance with section
4 8(v) of the Federal Deposit Insurance Act as if the
5 covered financial company were an insured deposi-
6 tory institution, the Corporation were the appro-
7 priate Federal banking agency for the company and
8 any foreign financial authority were the foreign
9 banking authority; and

10 (2) may maintain an office to coordinate for-
11 eign investigations or investigations on behalf of for-
12 eign financial authorities.

13 (l) PROHIBITION ON ENTERING SECRECY AGREE-
14 MENTS AND PROTECTIVE ORDERS.—The Corporation
15 may not enter into any agreement or approve any protec-
16 tive order which prohibits the Corporation from disclosing
17 the terms of any settlement of an administrative or other
18 action for damages or restitution brought by the Corpora-
19 tion in its capacity as receiver for a covered financial com-
20 pany.

21 (m) LIQUIDATION OF CERTAIN COVERED FINANCIAL
22 COMPANIES OR BRIDGE FINANCIAL COMPANIES.—Not-
23 withstanding any other provision of law (other than a con-
24 flicting provision of this section), the Corporation, in con-
25 nection with the liquidation of any covered financial com-

1 pany or bridge financial company with respect to which
2 the Corporation has been appointed as receiver, shall—

3 (1) in the case of any covered financial com-
4 pany or bridge financial company that is or has a
5 subsidiary that is a stockbroker (as that term is de-
6 fined in section 101 of title 11 of the United States
7 Code) but is not a member of the Securities Investor
8 Protection Corporation, apply the provisions of sub-
9 chapter III of chapter 7 of title 11 of the United
10 States Code in respect of the distribution to any
11 “customer” of all “customer name securities” and
12 “customer property” (as such terms are defined in
13 section 741 of such title 11) as if such covered fi-
14 nancial company or bridge financial company were a
15 debtor for purposes of such subchapter; or

16 (2) in the case of any covered financial com-
17 pany or bridge financial company that is a com-
18 modity broker (as that term is defined in section
19 101 of title 11 of the United States Code), apply the
20 provisions of subchapter IV of chapter 7 of title 11
21 of the United States Code in respect of the distribu-
22 tion to any “customer” of all “customer property”
23 (as such terms are defined in section 761 of such
24 title 11) as if such covered financial company or

1 bridge financial company were a debtor for purposes
2 of such subchapter.

3 (n) SYSTEMIC DISSOLUTION FUND.—

4 (1) ESTABLISHMENT AND PURPOSE.—

5 (A) IN GENERAL.—There is established in
6 the Treasury a separate fund to be known as
7 the “Systemic Dissolution Fund”—

8 (i) to facilitate and provide for the or-
9 derly and complete dissolution of any failed
10 financial company or companies that pose
11 a systemic threat to the financial markets
12 or economy, as determined under 1603(b);
13 and

14 (ii) to ensure that any taxpayer funds
15 utilized to facilitate such liquidations are
16 fully repaid from assessments levied on fi-
17 nancial companies that have assets of
18 \$50,000,000,000, adjusted for inflation, or
19 more.

20 (B) ADJUSTMENT OF THRESHOLD.—The
21 threshold referred to in subparagraph (A)(ii)
22 shall be adjusted on an annual basis, based on
23 the growth of assets owned or managed by fi-
24 nancial companies (as defined in section
25 1602(9)).

1 (2) AUTHORITY.—The Systemic Dissolution
2 Fund shall be administered by the Corporation,
3 which shall have exclusive authority to—

4 (A) impose assessments on covered finan-
5 cial companies in accordance with paragraphs
6 (6) through (8);

7 (B) maintain and administer the Fund in
8 a manner so as to make clear to the general
9 public that such Fund is unrelated to any other
10 Fund maintained and administered by the Cor-
11 poration, including the Deposit Insurance
12 Fund;

13 (C) utilize the Fund to facilitate the dis-
14 solution of a covered financial company (as de-
15 fined by section 1602(5)) as provided in para-
16 graph (3), or take such other actions as are au-
17 thorized by this subtitle;

18 (D) invest the Fund in accordance with
19 section 13(a) of the Federal Deposit Insurance
20 Act; and

21 (E) exercise borrowing authority as pre-
22 scribed in subsection (o).

23 (3) USES.—

1 (A) The Fund shall be available to the
2 Corporation for use with respect to the dissolu-
3 tion of a covered financial company to—

4 (i) cover the costs incurred by the
5 Corporation, including as receiver, in exer-
6 cising its rights, authorities, and powers
7 and fulfilling its obligations and respon-
8 sibilities under this section;

9 (ii) repay such funds in accordance
10 with subsection (o)(6); and

11 (iii) cover the costs of systemic sta-
12 bilization actions, pursuant to subsections
13 (d) and (f) of section 1604.

14 (B) The Fund shall not be used in any
15 manner to benefit any officer or director of
16 such company removed pursuant to section
17 1604(f)(6).

18 (4) DEPOSITS TO FUND.—All amounts assessed
19 against a financial company under this section shall
20 be deposited into the Fund.

21 (5) SIZE OF FUND.—The Corporation shall, by
22 rule, establish the minimum size of the Fund con-
23 sistent with subparagraphs (C) and (D) of para-
24 graph (6).

25 (6) ASSESSMENTS.—

1 (A) ASSESSMENTS TO MAINTAIN FUND.—

2 The Corporation shall impose risk-based assess-
3 ments on financial companies in such amount
4 and manner and subject to such terms and con-
5 ditions that the Corporation determines, by reg-
6 ulation and in consultation with the Council,
7 are necessary for the amount in the Fund to at
8 least equal the minimum size established pursu-
9 ant to paragraph (5).

10 (B) ASSESSMENTS TO REPLENISH THE

11 FUND.—If the Fund falls below the minimum
12 size established pursuant to paragraph (5), the
13 Corporation shall impose assessments on finan-
14 cial companies in such amounts and manner
15 and subject to such terms and conditions as the
16 Corporation determines, by regulation and in
17 consultation with the Council, are necessary to
18 replenish the fund subject to the limitations in
19 subparagraph (D).

20 (C) MINIMUM ASSESSMENT THRESHOLD.—

21 (i) IN GENERAL.—The Corporation

22 shall not assess financial companies with
23 less than \$50,000,000,000, adjusted for in-
24 flation, of assets on a consolidated basis,
25 subject to any differentiation as permitted

1 in paragraph (8) and shall assess financial
2 companies with \$50,000,000,000, adjusted
3 for inflation, or more in assets in accord-
4 ance with paragraphs (7) and (8).

5 (ii) HEDGE FUNDS.—The Corporation
6 shall not assess financial companies that
7 manage hedge funds (as defined by the
8 Corporation for the purpose of this section,
9 in consultation with the Securities and Ex-
10 change Commission) with less than
11 \$10,000,000,000, adjusted for inflation, of
12 assets, under management on a consoli-
13 dated basis, subject to any differentiation
14 as permitted in paragraph (8) and shall
15 assess any financial companies that man-
16 age hedge funds with \$10,000,000,000 or
17 more of assets under management in ac-
18 cordance with paragraphs (7) and (8).

19 (D) MAXIMUM SIZE OF FUND VIA ASSESS-
20 MENTS.—

21 (i) IN GENERAL.—The Corporation
22 shall suspend assessments on financial
23 companies on the day after the date on
24 which the total of the assessments, exclud-
25 ing interest or other earnings from invest-

1 ments made pursuant to paragraph (2)(D),
2 equals \$150,000,000,000.

3 (ii) EXCEPTIONS.—Any suspension of
4 assessments under clause (i)—

5 (I) may be set aside if the Fund
6 falls below \$150,000,000,000; and

7 (II) shall be set aside if the Fund
8 falls below the minimum level estab-
9 lished in subparagraph (C).

10 (E) ADDITIONAL AUTHORIZED ASSESS-
11 MENTS.—The Corporation is authorized to con-
12 duct risk-based assessments on financial compa-
13 nies in such amount and manner and subject to
14 terms and conditions that the Corporation de-
15 termines, with the concurrence of the Secretary
16 of the Treasury and the Federal Reserve Board,
17 are necessary to pay any shortfall in the Trou-
18 bled Asset Relief Program established by the
19 Emergency Economic Stabilization Act of 2008
20 that would add to the deficit or national debt,
21 as identified by the Director of the Office of
22 Management and Budget, in consultation with
23 the Director of the Congressional Budget Office
24 pursuant to section 134 of such Act (12 U.S.C.
25 5239).

1 (7) FACTORS.—The Corporation, in consulta-
2 tion with the Council shall establish a risk matrix to
3 be used in establishing assessments that takes into
4 account—

5 (A) the actual or expected risk of losses to
6 the Fund;

7 (B) economic conditions generally affecting
8 financial companies so as to allow assessments
9 and the Fund to increase during more favorable
10 economic conditions and to decrease during less
11 favorable economic conditions;

12 (C) any assessments imposed on a finan-
13 cial company or an affiliate of a financial com-
14 pany that—

15 (i) is an insured depository institu-
16 tion, assessed pursuant to section 7 or
17 13(c)(4)(G) of the Federal Deposit Insur-
18 ance Act;

19 (ii) is a member of the Securities In-
20 vestor Protection Corporation, assessed
21 pursuant to section 4 of the Securities In-
22 vestor Protection Act of 1970 (15 U.S.C.
23 78ddd);

24 (iii) is an insured credit union, as-
25 sessed pursuant to section 202(c)(1)(A)(i)

1 of the Federal Credit Union Act (12
2 U.S.C. 1782(c)(1)(A)(i)); or

3 (iv) is an insurance company, assessed
4 pursuant to applicable State law to cover
5 (or reimburse payments made to cover) the
6 costs of the rehabilitation, liquidation or
7 other State insolvency proceeding with re-
8 spect to 1 or more insurance companies;

9 (D) the risks presented by the financial
10 company to the financial system and the extent
11 to which the financial company has benefitted,
12 or likely would benefit, from the dissolution of
13 a financial company under this title, includ-
14 ing—

15 (i) the amount, different categories,
16 and concentrations of assets of the finan-
17 cial company and its affiliates, including
18 both on-balance sheet and off-balance sheet
19 assets;

20 (ii) the activities of the financial com-
21 pany and its affiliates;

22 (iii) the relevant market share of the
23 financial company and its affiliates;

24 (iv) the extent to which the financial
25 company is leveraged;

1 (v) the potential exposure to sudden
2 calls on liquidity precipitated by economic
3 distress;

4 (vi) the amount, maturity, volatility,
5 and stability of the company's financial ob-
6 ligations to, and relationship with, other fi-
7 nancial companies;

8 (vii) the amount, maturity, volatility,
9 and stability of the company's liabilities,
10 including the degree of reliance on short-
11 term funding, taking into consideration ex-
12 isting systems for measuring a company's
13 risk-based capital;

14 (viii) the stability and variety of the
15 company's sources of funding;

16 (ix) the company's importance as a
17 source of credit for households, businesses,
18 and State and local governments and as a
19 source of liquidity for the financial system;

20 (x) the extent to which assets are sim-
21 ply managed and not owned by the finan-
22 cial company and the extent to which own-
23 ership of assets under management is dif-
24 fuse; and

1 (xi) the amount, different categories,
2 and concentrations of liabilities, both in-
3 sured and uninsured, contingent and non-
4 contingent, including both on-balance sheet
5 and off-balance sheet liabilities, of the fi-
6 nancial company and its affiliates; and

7 (E) such other factors as the Corporation,
8 in consultation with the Council, may determine
9 to be appropriate.

10 (8) REQUIREMENT FOR EQUITABLE TREAT-
11 MENT IN ASSESSMENTS.—In establishing the assess-
12 ment system for the Fund, the Corporation, by regu-
13 lation and in consultation with the Council, shall dif-
14 ferentiate among financial companies based on com-
15 plexity of operations or organization, interconnected-
16 ness, size, direct or indirect activities, and any other
17 factors the Corporation or the Council may deem ap-
18 propriate to ensure that the assessments charged eq-
19 uitably reflect the risk posed to the Fund by par-
20 ticular classes of financial companies.

21 (9) MINIMUM COMMENT PERIOD.—In order to
22 ensure sufficient opportunity for public and congres-
23 sional review and evaluation of any assessment sys-
24 tem, any proposed regulations regarding the imple-
25 mentation of the assessment system under this sub-

1 title shall provide an opportunity for public comment
2 during a period of not less than 60 days.

3 (o) BORROWING AUTHORITY.—

4 (1) BORROWING FROM TREASURY.—

5 (A) IN GENERAL.—Subject to paragraphs
6 (3), (4), and (5), the Corporation may borrow
7 from the Treasury, and the Secretary of the
8 Treasury is authorized to lend to the Corpora-
9 tion on such terms as may be fixed by the Cor-
10 poration and the Secretary, such funds as in
11 the judgment of the Board of Directors of the
12 Corporation are required, in addition to the
13 funds available in the Systemic Dissolution
14 Fund, to permit the orderly dissolution of 1 or
15 more covered systemically significant financial
16 companies, covered affiliates, or covered sub-
17 sidiaries under this title.

18 (B) RATE OF INTEREST.—The rate of in-
19 terest to be charged in connection with any loan
20 made pursuant to this subsection shall not be
21 less than an amount determined by the Sec-
22 retary of the Treasury, taking into consider-
23 ation current market yields on outstanding
24 marketable obligations of the United States of
25 comparable maturities.

1 (2) PUBLIC DEBT ISSUANCES.—For the pur-
2 poses described in subsection (1), the Secretary of
3 the Treasury may use as a public-debt transaction
4 the proceeds of the sale of any securities hereafter
5 issued under chapter 31 of title 31, and the pur-
6 poses for which securities may be issued under chap-
7 ter 31 of title 31 are extended to include such loans.
8 All loans and repayments under this subsection shall
9 be treated as public-debt transactions of the United
10 States.

11 (3) BORROWING AUTHORITY WHEN FUND AS-
12 SETS ARE LESS THAN \$150,000,000,000.—

13 (A) Subject to paragraph (B), the bor-
14 rowing authority granted in paragraph (1) shall
15 be available to the Corporation where—

16 (i) the value of the Fund is less than
17 \$150,000,000,000;

18 (ii) the Corporation determines that
19 the immediate dissolution of a financial
20 company or financial companies requires
21 more funds than are available in the Fund;
22 and

23 (iii) the Corporation has provided a
24 specific plan for repayment under para-
25 graph (7)(A).

1 (B) The Corporation may borrow, and the
2 Secretary may lend, any amount of funds that,
3 when added to the amount available in the
4 Fund on the date the Corporation makes a re-
5 quest to borrow funds, would not exceed
6 \$150,000,000,000.

7 (C) For purposes of paragraph (1), the
8 Corporation's total debt may not exceed
9 \$150,000,000,000 (not including any funds bor-
10 rowed pursuant to subsection (s)).

11 (4) ADDITIONAL BORROWING AUTHORITY.—

12 (A) If at any time the Corporation antici-
13 pates that the dissolution of any financial com-
14 pany or financial companies will require funds
15 in excess of \$150,000,000,000—

16 (i) the Corporation shall submit to the
17 Secretary and the President a written re-
18 quest for additional borrowing authority
19 subject to the limitation in subparagraph
20 (5), which shall be accompanied by a cer-
21 tification indicating the anticipated amount
22 needed, the basis on which such amount
23 was determined, and any such information
24 as the Secretary may deem necessary; and

1 (ii) the President shall transmit a re-
2 quest to the House of Representatives and
3 the Senate requesting the additional bor-
4 rowing authority, which shall include the
5 certification referred to in clause (i) and
6 which includes a repayment schedule as
7 outlined in paragraph (7).

8 (B) Any request for borrowing authority
9 under paragraph (A) shall be effective only if
10 approved by affirmative vote of the House of
11 Representatives and the Senate in accordance
12 with subsection (s).

13 (5) LIMITATIONS ON ADDITIONAL BORROWING
14 AUTHORITY.—

15 (A) No request for borrowing authority is
16 permitted under paragraph (4) unless the
17 President, in consultation with the Council, cer-
18 tifies to the House of Representatives and the
19 Senate that the borrowing authority is nec-
20 essary to avoid or mitigate an imminent finan-
21 cial emergency.

22 (B) The amount of borrowing authority re-
23 quested under subparagraph (A)(i) may not ex-
24 ceed \$50,000,000,000.

1 (6) PROCEEDS FROM LIQUIDATION, REPAYMENT
2 OF FUNDS.—

3 (A) IN GENERAL.—The Corporation shall
4 take such measures as may be appropriate to
5 maximize the amount of funds from any dis-
6 solution that may be available for repayment
7 under subparagraph (B) consistent with sys-
8 temic concerns.

9 (B) REPAYMENT PRIORITY.—Amounts re-
10 alized from the dissolution of any financial com-
11 pany under this subtitle that are not otherwise
12 utilized by the Corporation to dissolve a finan-
13 cial company under subsection (n)(3)(A) shall
14 be paid—

15 (i) first, to repay any costs incurred
16 in exercising the borrowing authority
17 granted in paragraph (1); and

18 (ii) second, to recapitalize the Fund,
19 subject to the requirements of section
20 1604(g), to such level as the Corporation
21 deems necessary, but not to exceed
22 \$150,000,000,000.

23 (7) REPAYMENT PLAN AND SCHEDULES RE-
24 QUIRED FOR ANY BORROWING.—

1 (A) IN GENERAL.—No amount may be
2 provided by the Secretary of the Treasury to
3 the Corporation under paragraph (1) unless an
4 agreement is in effect between the Secretary
5 and the Corporation which—

6 (i) provides a specific plan and sched-
7 ule for assessments under (n)(6) to achieve
8 the repayment of the outstanding amount
9 of any borrowing under such subsection;
10 and

11 (ii) demonstrates that income to the
12 Corporation from assessments under this
13 section will be sufficient to amortize the
14 outstanding balance within the period es-
15 tablished in the repayment schedule and
16 pay the interest accruing on such balance.

17 (B) CONSULTATION WITH AND REPORT TO
18 CONGRESS.—The Secretary of the Treasury and
19 the Corporation shall—

20 (i) consult with the Committee on Fi-
21 nancial Services of the House of Rep-
22 resentatives and the Committee on Bank-
23 ing, Housing, and Urban Affairs of the
24 Senate on the terms of any repayment
25 schedule agreement; and

1 (ii) submit a copy of each repayment
2 schedule agreement to the Committee on
3 Financial Services of the House of Rep-
4 resentatives and the Committee on Bank-
5 ing, Housing, and Urban Affairs of the
6 Senate before the end of the 30-day period
7 beginning on the date any amount is pro-
8 vided by the Secretary of the Treasury to
9 the Corporation under paragraph (1).

10 (p) INFORMATION GATHERING AND VERIFICATION;
11 PAYMENTS.—

12 (1) IN GENERAL.—The Corporation may re-
13 quire each financial company to make available such
14 information as the Corporation may require—

15 (A) for purposes of—

16 (i) determining the financial com-
17 pany's assessment under this section;

18 (ii) verifying the accuracy of informa-
19 tion; and

20 (iii) preparing for dissolution, includ-
21 ing a dissolution plan as required by this
22 section; and

23 (B) for such other purposes as may be ap-
24 propriate and necessary to promote the orderly
25 dissolution of the financial company.

1 (2) USE OF EXISTING REPORTS.—The Corpora-
2 tion shall, to the fullest extent possible, accept—

3 (A) reports that a financial company has
4 provided or been required to provide to other
5 Federal or State supervisors or to appropriate
6 self-regulatory organizations;

7 (B) information that is otherwise required
8 to be reported publicly; and

9 (C) externally audited financial statements.

10 (3) AUTHORITY FOR ON-SITE INSPECTION.—

11 The Corporation may make on-site inspections of a
12 financial company's books and records as necessary
13 to carry out the purposes of this subsection.

14 (4) RULEMAKING.—The Corporation may pro-
15 mulgate such rules or regulations as are necessary
16 or appropriate to implement this subsection.

17 (5) PAYMENTS OF ASSESSMENTS REQUIRED.—

18 (A) IN GENERAL.—Any financial company
19 subject to an assessment under this section
20 shall pay to the Corporation such assessment.

21 (B) FORM OF PAYMENT.—The payments
22 required under this section shall be made in
23 such manner and at such time or times as the
24 Corporation, in consultation with the Council,
25 shall prescribe by regulation.

1 (6) PENALTY FOR FAILURE TO TIMELY PAY AS-
2 SESSMENTS.—Any financial company that fails or
3 refuses to pay any assessment under this section
4 shall be subject to a penalty under section 18(h) of
5 the Federal Deposit Insurance Act, as if that finan-
6 cial company were an insured depository institution.

7 (q) ASSESSMENT ACTIONS.—

8 (1) IN GENERAL.—The Corporation, in any
9 court of competent jurisdiction, shall be entitled to
10 recover from any financial company the amount of
11 any unpaid assessment lawfully payable by such
12 company.

13 (2) STATUTE OF LIMITATIONS.—Notwith-
14 standing any other provision in Federal law, or the
15 law of any State—

16 (A) any action by a financial company to
17 recover from the Corporation the overpaid
18 amount of any assessment shall be brought
19 within 3 years after the date the assessment
20 payment was due, subject to subparagraph (C);

21 (B) any action by the Corporation to re-
22 cover from a financial company the underpaid
23 amount of any assessment shall be brought
24 within 3 years after the date the assessment

1 payment was due, subject to subparagraph (C);
2 and

3 (C) if a financial company has made a
4 false or fraudulent statement with intent to
5 evade any or all of its assessment, the Corpora-
6 tion shall have until 3 years after the date of
7 discovery of the false or fraudulent statement in
8 which to bring an action to recover the under-
9 paid amount.

10 (r) REQUIREMENT TO MAINTAIN SYSTEMIC DIS-
11 SOLUTION FUND AS SEPARATE FUND.—The Systemic
12 Dissolution Fund shall at all times be administered in a
13 manner that is separate and distinct from the Deposit In-
14 surance Fund, and the Corporation shall take such actions
15 as may be necessary to ensure that such distinction is
16 made with respect to internal processes and procedures
17 as well as with regard to any public information, discus-
18 sion or other communications involving either Fund.

19 (s) CONGRESSIONAL APPROVAL OF ADDITIONAL
20 BORROWING AUTHORITY.—

21 (1) INTRODUCTION.—On the day on which the
22 request of the President is received by the House of
23 Representatives and the Senate under subsection
24 (o)(4)(A)(ii), a joint resolution specified in para-
25 graph (5) shall be introduced in the House by the

1 majority leader of the House and in the Senate by
2 the majority leader of the Senate. If either House is
3 not in session on the day on which such a request
4 is received, the joint resolution with respect to such
5 request shall be introduced in that House, as pro-
6 vided in the preceding sentence, on the first day
7 thereafter on which that House is in session.

8 (2) CONSIDERATION IN THE HOUSE OF REP-
9 REPRESENTATIVES.—

10 (A) REPORTING AND DISCHARGE.—Any
11 committee of the House of Representatives to
12 which a joint resolution introduced under para-
13 graph (1) is referred shall report such joint res-
14 olution to the House not later than 5 calendar
15 days after the applicable date of introduction of
16 the joint resolution. If a committee fails to re-
17 port such joint resolution within that period,
18 the committee shall be discharged from further
19 consideration of the joint resolution and the
20 joint resolution shall be referred to the appro-
21 priate calendar.

22 (B) PROCEEDING TO CONSIDERATION.—
23 After all committees authorized to consider a
24 joint resolution have reported such joint resolu-
25 tion to the House or have been discharged from

1 its consideration, it shall be in order, not later
2 than the sixth day after the applicable date of
3 introduction of the joint resolution, for the ma-
4 jority leader to move to proceed to consider the
5 joint resolution in the House. Such a motion
6 shall not be in order after the House has dis-
7 posed of a motion to proceed on the joint reso-
8 lution and shall not be in order if the House
9 has received a message from the Senate under
10 paragraph (4)(C). The previous question shall
11 be considered as ordered on the motion to its
12 adoption without intervening motion. A motion
13 to reconsider the vote by which the motion is
14 disposed of shall not be in order.

15 (C) CONSIDERATION.—The joint resolution
16 shall be considered in the House and shall be
17 considered as read. All points of order against
18 a joint resolution and against its consideration
19 are waived. The previous question shall be con-
20 sidered as ordered on the joint resolution to its
21 passage without intervening motion except two
22 hours of debate equally divided and controlled
23 by the proponent and an opponent. A motion to
24 reconsider the vote on passage of a joint resolu-
25 tion shall not be in order.

1 (3) CONSIDERATION IN THE SENATE.—

2 (A) PLACEMENT ON CALENDAR.—Upon in-
3 troduction in the Senate, the joint resolution
4 shall be placed immediately on the calendar.

5 (B) FLOOR CONSIDERATION.—

6 (i) IN GENERAL.—Notwithstanding
7 rule XXII of the Standing Rules of the
8 Senate, it is in order at any time during
9 the period beginning on the fourth day
10 after the applicable date of introduction in
11 the Senate and ending on the sixth day
12 after the applicable date of introduction in
13 the Senate (even though a previous motion
14 to the same effect has been disagreed to)
15 to move to proceed to the consideration of
16 the joint resolution, and all points of order
17 against the joint resolution (and against
18 consideration of the joint resolution) are
19 waived. The motion to proceed is not de-
20 batable. The motion is not subject to a mo-
21 tion to postpone. A motion to reconsider
22 the vote by which the motion is agreed to
23 or disagreed to shall not be in order. If a
24 motion to proceed to the consideration of
25 the resolution is agreed to, the joint resolu-

1 tion shall remain the unfinished business
2 until disposed of.

3 (ii) DEBATE.—Debate on the joint
4 resolution, and on all debatable motions
5 and appeals in connection therewith, shall
6 be limited to not more than 10 hours,
7 which shall be divided equally between the
8 majority and minority leaders or their des-
9 ignees. A motion further to limit debate is
10 in order and not debatable. An amendment
11 to, or a motion to postpone, or a motion to
12 proceed to the consideration of other busi-
13 ness, or a motion to recommit the joint
14 resolution is not in order.

15 (iii) VOTE ON PASSAGE.—The vote on
16 passage shall occur immediately following
17 the conclusion of the debate on a joint res-
18 olution, and a single quorum call at the
19 conclusion of the debate if requested in ac-
20 cordance with the rules of the Senate.

21 (iv) RULINGS OF THE CHAIR ON PRO-
22 CEDURE.—Appeals from the decisions of
23 the Chair relating to the application of the
24 rules of the Senate, as the case may be, to

1 the procedure relating to a joint resolution
2 shall be decided without debate.

3 (4) RULES RELATING TO SENATE AND HOUSE
4 OF REPRESENTATIVES.—

5 (A) COORDINATION WITH ACTION BY
6 OTHER HOUSE.—If, before the passage by one
7 House of a joint resolution of that House, that
8 House receives from the other House a joint
9 resolution, then the following procedures shall
10 apply:

11 (i) The joint resolution of the other
12 House shall not be referred to a com-
13 mittee.

14 (ii) With respect to the joint resolu-
15 tion of the House receiving the resolution,
16 the procedure in that House shall be the
17 same as if no such joint resolution had
18 been received from the other House; but
19 the vote on passage shall be on the joint
20 resolution of the other House.

21 (B) TREATMENT OF COMPANION MEAS-
22 URES.—If, following passage of a joint resolu-
23 tion in the Senate, the Senate then receives the
24 companion measure from the House of Rep-

1 representatives, the companion measure shall not
2 be debatable.

3 (C) FAILURE OF JOINT RESOLUTION IN
4 THE SENATE.—

5 (i) If, in the Senate, the motion to
6 proceed to the consideration of the joint
7 resolution fails on adoption, the Secretary
8 of the Senate shall transmit a message to
9 that effect to the House of Representa-
10 tives.

11 (ii) If, in the Senate, the joint resolu-
12 tion fails on passage, the Secretary of the
13 Senate shall transmit a message to that ef-
14 fect to the House of Representatives.

15 (D) RULES OF HOUSE OF REPRESENTA-
16 TIVES AND SENATE.—This paragraph and the
17 preceding paragraphs are enacted by Con-
18 gress—

19 (i) as an exercise of the rulemaking
20 power of the Senate and House of Rep-
21 resentatives, respectively, and as such it is
22 deemed a part of the rules of each House,
23 respectively, but applicable only with re-
24 spect to the procedure to be followed in
25 that House in the case of a joint resolu-

tion, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(5) DEFINITION.—In this section, the term “joint resolution” means only a joint resolution—

(A) which does not have a preamble;

(B) the title of which is as follows: “Joint resolution relating to the approval of request for borrowing authority under the Financial Stability Improvement Act of 2009.”; and

(C) the sole matter after the resolving clause of which is as follows: “That the Congress approves the request for additional borrowing authority transmitted to the Congress on _____ by the President under section 1609(o)(4)(A)(ii) of the Financial Stability Improvement Act of 2009.”, the blank space being filled with the appropriate date.

(t) NO FEDERAL STATUS.—

1 (1) AGENCY STATUS.—A covered financial com-
2 pany (or any covered subsidiary thereof) that is
3 placed into receivership is not a department, agency,
4 or instrumentality of the United States for purposes
5 of statutes that confer powers on or impose obliga-
6 tions on government entities.

7 (2) EMPLOYEE STATUS.—Interim directors, di-
8 rectors, officers, employees, or agents of a covered
9 financial company that is placed into receivership
10 are not, solely by virtue of service in any such capac-
11 ity, officers or employees of the United States. Any
12 employee of the Corporation, acting as receiver or of
13 any Federal agency who serves at the request of the
14 receiver as an interim director, director, officer, em-
15 ployee, or agent of a covered financial company that
16 is placed into receivership shall not—

17 (A) solely by virtue of service in any such
18 capacity lose any existing status as an officer or
19 employee of the United States for purposes of
20 title 5, United States Code, or any other provi-
21 sion of law, or;

22 (B) receive any salary or benefits for serv-
23 ice in any such capacity with respect to a cov-
24 ered financial company that is placed into re-
25 ceivership in addition to such salary or benefits

1 as are obtained through employment with the
2 Corporation or other Federal agency.

3 (u) STUDY OF PAYMENT OF CONSUMER CLAIMS.—

4 Not later than 6 months following the dissolution of a cov-
5 ered financial company under section 1603(b), the Comp-
6 troller General of the United States shall carry out a
7 study, and report on such study to the Committee on
8 Banking, Housing, and Urban Affairs and the Committee
9 on the Judiciary of the Senate and the Committee on Fi-
10 nancial Services and the Committee on the Judiciary of
11 the House of Representatives, regarding the satisfaction
12 of claims arising from violations of the provisions of the
13 Truth in Lending Act, if any, in instances where any as-
14 sets were transferred from such covered financial com-
15 pany.

16 **SEC. 1610. CLARIFICATION OF PROHIBITION REGARDING**
17 **CONCEALMENT OF ASSETS FROM RECEIVER**
18 **OR LIQUIDATING AGENT.**

19 (a) IN GENERAL.—Section 1032 of title 18, United
20 States Code, is amended in paragraph (1) by deleting “or”
21 before “the National Credit Union Administration
22 Board,” and by inserting immediately thereafter “or the
23 Corporation, as defined in section 1602 of the Dissolution
24 Authority for Large, Interconnected Financial Companies
25 Act of 2009,”.

1 (b) CONFORMING CHANGE.—The heading of section
2 1032 of title 18, United States Code, is amended by strik-
3 ing “**of financial institution**”.

4 **SEC. 1611. OFFICE OF DISSOLUTION.**

5 (a) TRIGGER OF AND PLAN FOR ESTABLISHMENT.—

6 (1) TRIGGER.—If the Secretary appoints the
7 Corporation as receiver for a financial company
8 under section 1604, the Inspector General of the
9 Corporation shall, as soon as possible after such ap-
10 pointment, establish in accordance with this section
11 the Office of Dissolution as an office within the Of-
12 fice of the Inspector General of the Corporation.

13 (2) PLAN.—The Inspector General of the Cor-
14 poration shall, in consultation with the Council of
15 Inspectors General on Financial Oversight estab-
16 lished under section 1702, formulate and maintain a
17 plan to allow for the timely establishment of an Of-
18 fice of Dissolution in accordance with paragraph (1).
19 The Inspector General of the Corporation shall make
20 such plan available to the Financial Services Over-
21 sight Council established under section 1001.

22 (b) SPECIAL DEPUTY INSPECTOR GENERAL.—The
23 head of the Office of Dissolution is the Special Deputy
24 Inspector General for Dissolution (in this section referred
25 to as the “Special Deputy Inspector General”), who shall

1 be appointed by and report to the Inspector General of
2 the Corporation.

3 (c) DUTIES.—

4 (1) AUDITS AND INVESTIGATIONS.—It shall be
5 the duty of the Special Deputy Inspector General, in
6 consultation with and subject to the approval of the
7 Inspector General of the Corporation, to conduct,
8 supervise, and coordinate audits and investigations
9 of the activities of the Corporation in its capacity as
10 receiver for a financial company under section 1604,
11 including by collecting the following information:

12 (A) A description of each financial com-
13 pany for which the Corporation has been ap-
14 pointed as receiver under section 1604.

15 (B) A description of the activities and fu-
16 ture plans of the Corporation with respect to
17 each financial company for which it has been
18 appointed as receiver, and an analysis of wheth-
19 er such activities and plans conform to the re-
20 quirements of this subtitle and other applicable
21 law and are in the best interest of the overall
22 stability of the financial system.

23 (C) Such other information as the Special
24 Deputy Inspector General considers appro-
25 priate, in consultation with and subject to the

1 approval of the Inspector General of the Cor-
2 poration.

3 (2) ADDITIONAL DUTIES.—

4 (A) SYSTEMS, PROCEDURES, AND CON-
5 TROLS.—The Special Deputy Inspector General
6 shall establish, maintain, and oversee such sys-
7 tems, procedures, and controls as the Special
8 Deputy Inspector General considers appro-
9 priate, in consultation with and subject to the
10 approval of the Inspector General of the Cor-
11 poration, to discharge the duties under para-
12 graph (1).

13 (B) REPORTING OF CRIMINAL VIOLATIONS
14 TO ATTORNEY GENERAL.—If the Special Dep-
15 uty Inspector General, in carrying out this sec-
16 tion, discovers facts that give the Special Dep-
17 uty Inspector General reasonable grounds to be-
18 lieve there has been a violation of Federal
19 criminal law, the Special Deputy Inspector Gen-
20 eral shall expeditiously report such facts to the
21 Attorney General.

22 (C) MINIMIZING DUPLICATION OF EF-
23 FORT.—The Inspector General of the Corpora-
24 tion and the Special Deputy Inspector General
25 shall coordinate to minimize duplication of ef-

1 fort in the oversight of the Corporation's activi-
2 ties as receiver for financial companies under
3 section 1604.

4 (3) DUTIES UNDER THE INSPECTOR GENERAL
5 ACT OF 1978.—In addition to the duties specified in
6 paragraphs (1) and (2), the Special Deputy Inspec-
7 tor General shall assist the Inspector General of the
8 Corporation in carrying out such duties and respon-
9 sibilities of inspectors general under the Inspector
10 General Act of 1978 as the Inspector General of the
11 Corporation considers appropriate.

12 (d) AUTHORITIES UNDER THE INSPECTOR GENERAL
13 ACT OF 1978.—The Inspector General of the Corporation
14 may confer on the Special Deputy Inspector General such
15 authorities provided to the Inspector General of the Cor-
16 poration in section 6 of the Inspector General Act of 1978
17 as the Inspector General of the Corporation considers nec-
18 essary to enable the Special Deputy Inspector General to
19 carry out the duties specified in subsection (c).

20 (e) PERSONNEL, FACILITIES, AND OTHER RE-
21 SOURCES.—

22 (1) IN GENERAL.—The Special Deputy Inspec-
23 tor General may, in consultation with and subject to
24 the approval of the Inspector General of the Cor-
25 poration, expend such amounts from the fund estab-

1 lished under section 1609(n) as are necessary to
2 carry out the duties described in subsection (c) and
3 to submit the reports required by subsection (h).

4 (2) ADDITIONAL FUNDS.—If the fund estab-
5 lished under section 1609(n) is insufficient to enable
6 the Special Deputy Inspector General to begin car-
7 rying out the duties of the Special Deputy Inspector
8 General in a timely fashion or later becomes insuffi-
9 cient to enable the Special Deputy Inspector General
10 to carry out such duties, the Inspector General of
11 the Corporation shall detail the necessary personnel,
12 facilities, or other resources to the Special Deputy
13 Inspector General.

14 (f) CORRECTIVE RESPONSES TO AUDIT PROB-
15 LEMS.—The Chairman of the Corporation shall—

16 (1) take action to address deficiencies identified
17 by a report or investigation of the Special Deputy
18 Inspector General; or

19 (2) certify to the appropriate committees of
20 Congress that no action is necessary or appropriate.

21 (g) COOPERATION AND COORDINATION WITH OTHER
22 ENTITIES.—In carrying out the duties, responsibilities,
23 and authorities of the Special Deputy Inspector General
24 under this section, the Special Deputy Inspector General
25 shall work with each of the inspectors general who is a

1 member of the Council of Inspectors General on Financial
2 Oversight established under section 1703(a)(1), in order
3 to avoid duplication of effort and ensure comprehensive
4 oversight of the Corporation's activities as a receiver ap-
5 pointed under section 1604.

6 (h) REPORTS.—

7 (1) IN GENERAL.—In lieu of the semiannual re-
8 ports required by section 5(a) of the Inspector Gen-
9 eral Act of 1978, the Special Deputy Inspector Gen-
10 eral shall submit to the appropriate committees of
11 Congress at the following times a report prepared in
12 consultation with and approved by the Inspector
13 General of the Corporation:

14 (A) Not later than 30 days after the ap-
15 pointment of the Special Deputy Inspector Gen-
16 eral.

17 (B) During the first 3 years after such ap-
18 pointment, not later than 30 days after the end
19 of each fiscal quarter during which the Cor-
20 poration acts as receiver for a financial com-
21 pany under section 1604.

22 (C) During the 4th year after such ap-
23 pointment and each year thereafter, not later
24 than 30 days after the end of the 2nd and the
25 4th fiscal quarters, if the Corporation acts as

1 receiver for a financial company under section
2 1604 during such semiannual period.

3 (2) CONTENT OF REPORTS.—Each report re-
4 quired by paragraph (1) shall include a summary,
5 for the period since the last required report (or, in
6 the case of the first report, for the period since the
7 Corporation was first appointed as a receiver under
8 section 1604) of—

9 (A) the activities of the Special Deputy In-
10 spector General; and

11 (B) the activities and future plans of the
12 Corporation with respect to each financial com-
13 pany for which it served as receiver.

14 (i) TERMINATION.—The Office of Dissolution shall
15 terminate 6 months after the Corporation ceases to serve
16 as a receiver for any financial company under section
17 1604, subject to reestablishment pursuant to subsection
18 (a)(1).

19 **SEC. 1612. MISCELLANEOUS PROVISIONS.**

20 (a) BANKRUPTCY CODE AMENDMENTS.—

21 (1) Section 109(b)(2) of title 11 of the United
22 States Code is amended by inserting “covered finan-
23 cial company (as that term is defined in section
24 1602(5) of the Dissolution Authority for Large,

1 Interconnected Financial Companies Act of 2009),”
2 after “a domestic insurance company,”.

3 (2) Section 303 of title 11, United States Code,
4 is amended—

5 (A) in subsection (h)—

6 (i) by striking “or” at the end of
7 paragraph (1);

8 (ii) by striking the period at the end
9 of paragraph (2) and inserting “; or”; and

10 (iii) by adding at the end the fol-
11 lowing new paragraph:

12 “(3) an involuntary case is filed against a cov-
13 ered financial company, as defined in section
14 1602(5) of the Dissolution Authority for Large,
15 Interconnected Financial Companies Act of 2009, by
16 the Federal Deposit Insurance Corporation under
17 section 1607 of that Act.”; and

18 (B) by adding at the end the following new
19 subsection:

20 “(m) Notwithstanding subsections (a) and (b) of this
21 section and section 109(b)(2), an involuntary case may be
22 commenced by the Federal Deposit Insurance Corporation
23 against a covered financial company (as defined in section
24 1602(5) of the Dissolution Authority for Large, Inter-
25 connected Financial Companies Act of 2009). Such invol-

1 untary case may be commenced by the Federal Deposit
2 Insurance Corporation in accordance with section 1607 of
3 that Act.”.

4 (3) Title 11, United States Code, is amended by
5 inserting after section 303 the following new section:

6 **“SEC. 304. CASES INVOLVING FDIC DISSOLUTION AUTHOR-**
7 **ITY.**

8 “(a) APPOINTMENT.—In any case commenced by the
9 Federal Deposit Insurance Corporation under section
10 303(m), on the request of the Federal Deposit Insurance
11 Corporation, such Corporation shall be appointed to serve
12 as trustee in such case, notwithstanding any other provi-
13 sion of this title.

14 “(b) QUALIFICATION.—Sections 321, 322, 324, and
15 326 shall not apply with respect to the appointment or
16 service of such Corporation as trustee in any case so com-
17 menced.”.

18 (b) FEDERAL DEPOSIT INSURANCE ACT AND FED-
19 ERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT
20 ACT OF 1991.—

21 (1) Section 18(c)(4)(G)(i) of the Federal De-
22 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) is
23 amended by inserting at the end the following new
24 sentence: “The determination with regard to the
25 Corporation’s exercise of authority under this sub-

1 paragraph shall apply to only an insured depository
2 institution except when severe financial conditions
3 exist which threaten the stability of a significant
4 number of insured depository institutions.”.

5 (2) Section 403(a) of the Federal Deposit In-
6 surance Corporation Improvement Act of 1991 (12
7 U.S.C. 4403(a)) is amended by inserting “section
8 1609(c) of the Dissolution Authority for Large,
9 Interconnected Financial Companies Act of 2009,
10 section 1367 of the Federal Housing Enterprises Fi-
11 nancial Safety and Soundness Act of 1992 (12
12 U.S.C. 4617(d)),” after “section 11(e) of the Fed-
13 eral Deposit Insurance Act,”.

14 **SEC. 1613. AMENDMENT TO FEDERAL DEPOSIT INSURANCE**
15 **ACT.**

16 The Federal Deposit Insurance Act (12 U.S.C. 1811
17 et seq.) is amended by inserting after section 11A the fol-
18 lowing new section:

19 **“SEC. 11B. SYSTEMIC DISSOLUTION AUTHORITY AND FUND.**

20 “(a) SYSTEMIC DISSOLUTION AUTHORITY.—The
21 Corporation shall establish a Systemic Dissolution Author-
22 ity, which shall function as a subsidiary of the Corpora-
23 tion.

24 “(b) SYSTEMIC DISSOLUTION FUND.—Any fund es-
25 tablished for the purpose of facilitating the dissolution of

1 a financial company under subtitle G of the Financial Sta-
2 bility Improvement Act shall be called the Systemic Dis-
3 solution Fund, which shall be managed by the Corpora-
4 tion, through the Systemic Dissolution Authority.

5 “(c) MANAGEMENT OF FUND.—

6 “(1) SEPARATE MAINTENANCE.—The Systemic
7 Dissolution Fund shall be separately maintained and
8 not commingled with any other fund of the Corpora-
9 tion.

10 “(2) TREATMENT OF AND ACCOUNTING FOR AS-
11 SETS.—The assets and liabilities of the Systemic
12 Dissolution Fund—

13 “(A) shall be the assets and liabilities of
14 the Fund and not of the Corporation; and

15 “(B) shall not be consolidated with the as-
16 sets and liabilities of the Deposit Insurance
17 Fund or the Corporation for accounting, report-
18 ing, or any other purpose.

19 “(d) RIGHTS, POWERS, AND DUTIES.—

20 “(1) IN GENERAL.—The Corporation, in addi-
21 tion to any rights, powers, and duties under this Act
22 or any other law, shall, through the Systemic Dis-
23 solution Authority, have all rights, powers, and du-
24 ties necessary to implement and maintain the Sys-
25 temic Dissolution Fund in accordance with subtitle

1 G of the Financial Stability Improvement Act of
2 2009.

3 “(2) POWERS AS RECEIVER FOR COVERED FI-
4 NANCIAL COMPANY.—When acting as receiver with
5 respect to any covered financial company, as defined
6 in subtitle G of the Financial Stability Improvement
7 Act of 2009, the Corporation, through the Systemic
8 Dissolution Authority, shall have all rights, powers,
9 and duties that the Corporation has as receiver
10 under such subtitle.

11 “(3) SPECIFIC AND INCIDENTAL POWERS.—The
12 Corporation, through the Systemic Dissolution Au-
13 thority, or any duly authorized officer or agent of
14 the Authority, may exercise all powers specifically
15 granted by the provisions of this Act and subtitle G
16 of the Financial Stability Improvement Act and such
17 incidental powers as shall be necessary to carry out
18 the powers so granted and accomplish the purposes
19 of subtitle G of the Financial Stability Improvement
20 Act.

21 “(e) STAFF AND RESOURCES.—

22 “(1) IN GENERAL.—The Corporation shall as-
23 sign such staff, and provide such administrative and
24 other support services to the Systemic Dissolution

1 Authority as is necessary to fulfill the statutory re-
2 sponsibilities of the Authority.

3 “(2) ADMINISTRATIVE EXPENSES.—The cost
4 of all personnel, services, and resources provided on
5 behalf of the Systemic Dissolution Authority shall be
6 paid from the Systemic Dissolution Fund.”.

7 **SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION**
8 **LIMITATIONS.**

9 At any time that the Corporation has borrowed from
10 the Treasury pursuant to section 1609(o) to resolve a cov-
11 ered financial company, the Corporation shall apply the
12 executive compensation limits under section 111 of the
13 Emergency Economic Stabilization Act of 2008 to such
14 company for so long as such company is in receivership.

15 **SEC. 1615. STUDY ON THE EFFECT OF SAFE HARBOR PROVI-**
16 **SIONS IN INSOLVENCY CASES.**

17 (a) STUDY.—The Comptroller General of the United
18 States shall conduct a study of the safe harbor provisions
19 under Federal law for derivatives, swaps, and securities
20 transactions addressing—

21 (1) how the safe harbor provisions have been
22 applied in insolvency cases;

23 (2) how such provisions impact the rights of
24 parties in interest in insolvency cases;

1 (3) whether these provisions impede or interfere
2 with allowing a debtor a reasonable period of time
3 to pursue rehabilitation and reorganization; and

4 (4) whether these provisions had an adverse im-
5 pact on the financial marketplace.

6 (b) REPORT TO THE CONGRESS.—Not later than 180
7 days after the date of the enactment of this title, the
8 Comptroller General shall submit to the President pro
9 tempore of the Senate and the Speaker of the House of
10 Representatives a report on the results of the study con-
11 ducted under subsection (a), together with any rec-
12 ommendations for legislation to address any adverse im-
13 pacts presented by the Federal safe harbor provisions.

14 **SEC. 1616. TREASURY STUDY.**

15 (a) STUDY REQUIRED.—The Secretary shall carry
16 out a study analyzing how the resolution authority pro-
17 vided under this subtitle should be funded. Such study
18 shall consider the following factors:

19 (1) The consequences of any assessments on the
20 overall recovery of the economy of the United States.

21 (2) Any immediate or continuing consequences
22 of assessments on other aspects of the economy of
23 the United States, including job creation, public and
24 private investments, small business loans, and gen-
25 eral credit availability.

1 (3) The consequences of any assessments on in-
2 dividual sectors of the financial services industry.

3 (4) The consequences of any assessments on the
4 financial integrity on individual firms within each
5 sector of the financial services industry.

6 (5) The appropriateness and effect of assess-
7 ments on firms that are subject to separate assess-
8 ments under existing State or Federal depositor, pol-
9 icyholder, or investor protection mechanisms and the
10 consequences of any such assessments on these
11 mechanisms themselves.

12 (6) The implications of assessments on all rel-
13 evant stakeholders, including taxpayers, depositors,
14 insurance policyholders, investors, counterparties,
15 and creditors.

16 (7) Evaluation of the appropriate assessment
17 base, including but not limited to factors such as as-
18 sets and liabilities, assets under management, policy-
19 holder reserves, other reserves, statutory and regu-
20 latory capital requirements, trustee assets, and de-
21 posits and inflationary factors.

22 (b) REPORT.—Not later than the end of the 6-month
23 period beginning on the date of the enactment of this sub-
24 title, the Secretary shall issue a report to the Congress
25 containing all determinations and conclusions made by the

1 Secretary in carrying out the study required under sub-
 2 section (a).

3 **SEC. 1617. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT IN-**
 4 **SURANCE ACT.**

5 Section 11(d)(11)(A) of the Federal Deposit Insur-
 6 ance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

7 (1) by redesignating clauses (iii) through (v) as
 8 clauses (iv) through (vi), respectively; and

9 (2) by inserting after clause (ii) the following
 10 new clause (iii):

11 “(iii) Any obligation of the institution
 12 owed to the Corporation as a result of the
 13 institution’s default on a Corporation-guar-
 14 anteed debt.”.

15 **Subtitle H—Additional Improve-**
 16 **ments for Financial Crisis Man-**
 17 **agement**

18 **SEC. 1701. ADDITIONAL IMPROVEMENTS FOR FINANCIAL**
 19 **CRISIS MANAGEMENT.**

20 Section 13 of the Federal Reserve Act (12 U.S.C.
 21 343) is amended by striking the 3rd undesignated para-
 22 graph and inserting the following new subsection:

23 “(c) FINANCIAL CRISIS MANAGEMENT.—

24 “(1) IN GENERAL.—In unusual and exigent cir-
 25 cumstances, the Board of Governors of the Federal

1 Reserve System, upon the written determination,
2 pursuant to section 1109 of the Financial Stability
3 Improvement Act of 2009, of the Financial Stability
4 Oversight Council, that a liquidity event exists that
5 could destabilize the financial system (which deter-
6 mination shall be made upon a vote of not less than
7 two-thirds of the members of such Council then serv-
8 ing), and with the written consent of the Secretary
9 of the Treasury (after certification by the President
10 that an emergency exists), may authorize any Fed-
11 eral reserve bank, during such periods as the Board
12 may determine and at rates established in accord-
13 ance with the provision designated as (d) of section
14 14, to discount for an individual, partnership, or
15 corporation, notes, drafts, and bills of exchange
16 when such notes, drafts, and bills of exchange are
17 indorsed or otherwise secured to the satisfaction of
18 the Federal reserve bank and in conformance with
19 regulations or guidelines issued by the Board of
20 Governors regarding the quality of notes, drafts, and
21 bills of exchange available for discount and of the se-
22 curity for those notes, drafts and bills of exchange,
23 unless a joint resolution (as defined in paragraph
24 (5)) is adopted. Upon making any determination
25 under this paragraph, with the consent of the Sec-

1 retary of the Treasury, the Financial Stability Over-
2 sight Council shall promptly submit a notice of such
3 determination to the House of Representatives and
4 the Senate. The amounts made available under this
5 subsection shall not exceed \$4,000,000,000,000.

6 “(2) CLARIFICATION OF ‘SECURED TO THE SAT-
7 ISFACTION OF THE FEDERAL RESERVE BANK’.—No
8 member of the Board of Governors of the Federal
9 Reserve System shall vote to authorize any action
10 permitted under paragraph (1) and the Secretary of
11 the Treasury shall not provide the written consent
12 required by paragraph (1) unless that member be-
13 lieves and the Secretary of the Treasury believes:

14 “(A) that there is at least a 99 percent
15 likelihood that all funds disbursed or put at risk
16 by such action will be repaid to the Federal Re-
17 serve System; and

18 “(B) that there is at least a 99 percent
19 likelihood that all interest due on any funds dis-
20 bursed will also be paid to the Federal Reserve
21 System.

22 “(3) LOW QUALITY ASSETS EXCLUDED.—The
23 notes, drafts, and bills of exchange available for dis-
24 count for purposes of paragraph (1), and the secu-
25 rity for those notes, drafts and bills of exchange may

1 only include any of the following assets if such asset
2 is used to further enhance the security for those
3 notes, drafts and bills of exchange which shall be
4 fully secured with assets that are not any of the fol-
5 lowing assets:

6 “(A) An asset (including a security) that
7 would be classified as “substandard,” “doubt-
8 ful,” or “loss,” or treated as “special mention”
9 or “other transfer risk problems,” in a report
10 of examination or inspection of bank or an affil-
11 iate of a bank prepared by either a Federal or
12 State supervisory agency or in any internal
13 classification system used by such individual,
14 partnership or corporation.

15 “(B) An asset in a nonaccrual status.

16 “(C) An asset on which principal or inter-
17 est payments are more than 30 days past due.

18 “(D) An asset whose terms have been re-
19 negotiated or compromised due to the deterio-
20 rating financial condition of the obligor unless
21 such asset has been performing for at least 6
22 months since the renegotiation.

23 “(4) NO SINGLE OR SPECIFIC BENE-
24 FICIARIES.—The Board of Governors of the Federal
25 Reserve System may authorize a Federal reserve

1 bank to discount notes, drafts, or bills of exchange
2 under this section only as part of a broadly available
3 credit or other facility and may not authorize a Fed-
4 eral Reserve bank to discount notes, drafts, or bills
5 of exchange for only a single and specific individual,
6 partnership, or corporation.

7 “(5) EVIDENCE OF UNAVAILABILITY OF CRED-
8 IT.—Before discounting any note, draft, or bill of ex-
9 change under this subsection for an individual, a
10 partnership or corporation as part of a broadly
11 available credit or other facility the Federal reserve
12 bank shall obtain evidence that such individual, part-
13 nership, or corporation is unable to secure adequate
14 credit accommodations from other banking institu-
15 tions. All discounts under this subsection for individ-
16 uals, partnerships, or corporations shall be subject
17 to such limitations, restrictions, and regulations as
18 the Board of Governors of the Federal Reserve Sys-
19 tem may prescribe.

20 “(6) CONGRESSIONAL DISAPPROVAL OF ADDI-
21 TIONAL BORROWING AUTHORITY.—

22 “(A) INTRODUCTION.—Within 90 days of
23 the day on which notice from the Financial Sta-
24 bility Oversight Council is received by the
25 House of Representatives and the Senate under

1 paragraph (1), a joint resolution specified in
2 subparagraph (E) may be introduced in the
3 House by the majority leader and in the Senate
4 by the majority leader.

5 “(B) CONSIDERATION IN THE HOUSE OF
6 REPRESENTATIVES.—

7 “(i) REPORTING AND DISCHARGE.—

8 Any committee of the House of Represent-
9 atives to which a joint resolution intro-
10 duced under subparagraph (A) is referred
11 shall report such joint resolution to the
12 House not later than 5 calendar days after
13 the applicable date of introduction of the
14 joint resolution. If a committee fails to re-
15 port such joint resolution within that pe-
16 riod, the committee shall be discharged
17 from further consideration of the joint res-
18 olution and the joint resolution shall be re-
19 ferred to the appropriate calendar.

20 “(ii) PROCEEDING TO CONSIDER-
21 ATION.—After all committees authorized to
22 consider a joint resolution have reported
23 such joint resolution to the House or have
24 been discharged from its consideration, it
25 shall be in order, not later than the sixth

1 day after the applicable date of introduc-
2 tion of the joint resolution, for the major-
3 ity leader to move to proceed to consider
4 the joint resolution in the House. Such a
5 motion shall not be in order after the
6 House has disposed of a motion to proceed
7 on the joint resolution and shall not be in
8 order if the House has received a message
9 from the Senate under subparagraph
10 (D)(iii)(I). The previous question shall be
11 considered as ordered on the motion to its
12 adoption without intervening motion. A
13 motion to reconsider the vote by which the
14 motion is disposed of shall not be in order.

15 “(iii) CONSIDERATION.—The joint
16 resolution shall be considered in the House
17 and shall be considered as read. All points
18 of order against a joint resolution and
19 against its consideration are waived. The
20 previous question shall be considered as or-
21 dered on the joint resolution to its passage
22 without intervening motion except two
23 hours of debate equally divided and con-
24 trolled by the proponent and an opponent.

1 A motion to reconsider the vote on passage
2 of a joint resolution shall not be in order.

3 “(C) CONSIDERATION IN THE SENATE.—

4 “(i) PLACEMENT ON CALENDAR.—

5 Upon introduction in the Senate, the joint
6 resolution shall be placed immediately on
7 the calendar.

8 “(ii) FLOOR CONSIDERATION.—

9 “(I) IN GENERAL.—Notwith-
10 standing rule XXII of the Standing
11 Rules of the Senate, it is in order at
12 any time during the period beginning
13 on the fourth day after the applicable
14 date of introduction of the joint reso-
15 lution in the Senate and ending on
16 the sixth day after the applicable date
17 of introduction in the Senate (even
18 though a previous motion to the same
19 effect has been disagreed to) to move
20 to proceed to the consideration of the
21 joint resolution, and all points of
22 order against the joint resolution (and
23 against consideration of the joint reso-
24 lution) are waived. The motion to pro-
25 ceed is not debatable. The motion is

1 not subject to a motion to postpone. A
2 motion to reconsider the vote by which
3 the motion is agreed to or disagreed
4 to shall not be in order. If a motion
5 to proceed to the consideration of the
6 resolution is agreed to, the joint reso-
7 lution shall remain the unfinished
8 business until disposed of.

9 “(II) DEBATE.—Debate on the
10 joint resolution, and on all debatable
11 motions and appeals in connection
12 therewith, shall be limited to not more
13 than 10 hours, which shall be divided
14 equally between the majority and mi-
15 nority leaders or their designees. A
16 motion further to limit debate is in
17 order and not debatable. An amend-
18 ment to, or a motion to postpone, or
19 a motion to proceed to the consider-
20 ation of other business, or a motion to
21 recommit the joint resolution is not in
22 order.

23 “(III) VOTE ON PASSAGE.—The
24 vote on passage shall occur imme-
25 diately following the conclusion of the

1 debate on a joint resolution, and a
2 single quorum call at the conclusion of
3 the debate if requested in accordance
4 with the rules of the Senate.

5 “(IV) RULINGS OF THE CHAIR
6 ON PROCEDURE.—Appeals from the
7 decisions of the Chair relating to the
8 application of the rules of the Senate,
9 as the case may be, to the procedure
10 relating to a joint resolution shall be
11 decided without debate.

12 “(D) RULES RELATING TO SENATE AND
13 HOUSE OF REPRESENTATIVES.—

14 “(i) COORDINATION WITH ACTION BY
15 OTHER HOUSE.—If, before the passage by
16 one House of a joint resolution of that
17 House, that House receives from the other
18 House a joint resolution, then the following
19 procedures shall apply:

20 “(I) The joint resolution of the
21 other House shall not be referred to a
22 committee.

23 “(II) With respect to the joint
24 resolution of the House receiving the
25 resolution, the procedure in that

1 House shall be the same as if no such
2 joint resolution had been received
3 from the other House; but the vote on
4 passage shall be on the joint resolu-
5 tion of the other House.

6 “(ii) TREATMENT OF COMPANION
7 MEASURES.—If, following passage of a
8 joint resolution in the Senate, the Senate
9 then receives the companion measure from
10 the House of Representatives, the com-
11 panion measure shall not be debatable.

12 “(iii) FAILURE OF JOINT RESOLUTION
13 IN THE SENATE.—

14 “(I) If, in the Senate, the motion
15 to proceed to the consideration of the
16 joint resolution fails on adoption, the
17 Secretary of the Senate shall transmit
18 a message to that effect to the House
19 of Representatives.

20 “(II) If, in the Senate, the joint
21 resolution fails on passage, the Sec-
22 retary of the Senate shall transmit a
23 message to that effect to the House of
24 Representatives.

1 “(iv) RULES OF HOUSE OF REP-
2 REPRESENTATIVES AND SENATE.—This para-
3 graph and the preceding paragraphs are
4 enacted by Congress—

5 “(I) as an exercise of the rule-
6 making power of the Senate and
7 House of Representatives, respec-
8 tively, and as such it is deemed a part
9 of the rules of each House, respec-
10 tively, but applicable only with respect
11 to the procedure to be followed in that
12 House in the case of a joint resolu-
13 tion, and it supersedes other rules
14 only to the extent that it is incon-
15 sistent with such rules; and

16 “(II) with full recognition of the
17 constitutional right of either House to
18 change the rules (so far as relating to
19 the procedure of that House) at any
20 time, in the same manner, and to the
21 same extent as in the case of any
22 other rule of that House.

23 “(E) DEFINITION.—In this paragraph, the
24 term ‘joint resolution’ means only a joint reso-
25 lution—

1 “(i) which does not have a preamble;

2 “(ii) the title of which is as follows:

3 ‘Joint resolution relating to the use of au-
4 thority relevant to section 13(c) of the
5 Federal Reserve Act under the Financial
6 Stability Improvement Act of 2009.’; and

7 “(iii) the sole matter after the resolv-
8 ing clause of which is as follows: ‘That the
9 Congress disapproves the use of authority
10 pursuant to section 13(c) of the Federal
11 Reserve Act transmitted to the Congress
12 on _____ by the Board of Governors of
13 the Federal Reserve System’, the blank
14 space being filled with the appropriate
15 date.

16 “(F) NONSCORING OF JOINT RESOLUTIONS
17 OF DISAPPROVAL.—A joint resolution of dis-
18 approval shall be treated as having no budg-
19 etary effect by the Congressional Budget Office
20 and the Office of Management and Budget for
21 any purpose under the Rules of the House of
22 Representatives, the Standing Rules of the Sen-
23 ate, the Congressional Budget Act of 1974, or
24 any statutory pay-as-you-go requirement.”.

1 **SEC. 1702. CERTAIN RESTRICTIONS RELATED TO FOREIGN**
2 **CURRENCY SWAP AUTHORITY.**

3 Section 14 of the Federal Reserve Act is amended
4 by adding at the end the following new subsection:

5 “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN
6 CURRENCY SWAP AUTHORITY.—A Federal reserve bank
7 may not take any action pursuant to the authority pro-
8 vided under this section with respect to foreign currency
9 swaps unless—

10 “(1) such action is approved in advance by the
11 affirmative vote of not less than five members of the
12 Board of Governors of the Federal Reserve System;
13 and

14 “(2) such action is taken with the written con-
15 currence of the Secretary of the Treasury.”.

16 **SEC. 1703. ADDITIONAL OVERSIGHT OF FINANCIAL REGU-**
17 **LATORY SYSTEM.**

18 (a) COUNCIL OF INSPECTORS GENERAL ON FINAN-
19 CIAL OVERSIGHT.—

20 (1) ESTABLISHMENT AND MEMBERSHIP.—

21 There is established a Council of Inspectors General
22 on Financial Oversight (in this section referred to as
23 the “Council of Inspectors General”) chaired by the
24 Inspector General of the Department of the Treas-
25 ury and composed of the inspectors general of the
26 following:

1 (A) The Board of Governors of the Federal
2 Reserve System.

3 (B) The Commodity Futures Trading
4 Commission.

5 (C) The Department of Housing and
6 Urban Development.

7 (D) The Department of the Treasury.

8 (E) The Federal Deposit Insurance Cor-
9 poration.

10 (F) The Federal Housing Finance Agency.

11 (G) The National Credit Union Adminis-
12 tration.

13 (H) The Securities and Exchange Commis-
14 sion.

15 (I) The Troubled Asset Relief Program
16 (until the termination of the authority of the
17 Special Inspector General for such program
18 under section 121(h) of the Emergency Eco-
19 nomic Stabilization Act of 2008 (12 U.S.C.
20 5231(h))).

21 (2) DUTIES.—

22 (A) MEETINGS.—The Council of Inspec-
23 tors General shall meet not less than once each
24 quarter, or more frequently if the chair con-
25 siders it appropriate, to facilitate the sharing of

1 information among inspectors general and to
2 discuss the ongoing work of each inspector gen-
3 eral who is a member of the Council of Inspec-
4 tors General, with a focus on concerns that may
5 apply to the broader financial sector and ways
6 to improve financial oversight.

7 (B) ANNUAL REPORT.—The Council of In-
8 spectors General shall, each year within a time-
9 frame that permits consideration by the Finan-
10 cial Services Oversight Council (in this section
11 referred to as the “Oversight Council”) prior to
12 the submission of its report for such year under
13 section 1006, submit to the Oversight Council
14 and to Congress a report including—

15 (i) for each inspector general who is a
16 member of the Council of Inspectors Gen-
17 eral, a section within the exclusive editorial
18 control of such inspector general that high-
19 lights the concerns and recommendations
20 of such inspector general in such inspector
21 general’s ongoing and completed work,
22 with a focus on issues that may apply to
23 the broader financial sector; and

24 (ii) a summary of the general observa-
25 tions of the Council of Inspectors General

1 based on the views expressed by each in-
2 spector general as required by clause (i),
3 with a focus on measures that should be
4 taken to improve financial oversight.

5 (3) COUNCIL OF INSPECTORS GENERAL WORK-
6 ING GROUPS.—

7 (A) WORKING GROUPS TO EVALUATE
8 OVERSIGHT COUNCIL.—

9 (i) CONVENING A WORKING GROUP.—

10 The Council of Inspectors General may, by
11 majority vote, convene a Council of Inspec-
12 tors General Working Group to evaluate
13 the effectiveness and internal operations of
14 the Oversight Council.

15 (ii) PERSONNEL AND RESOURCES.—

16 The inspectors general who are members
17 of the Council of Inspectors General may
18 detail staff and resources to a Council of
19 Inspectors General Working Group estab-
20 lished under this subparagraph to enable it
21 to carry out its duties.

22 (iii) REPORTS.—A Council of Inspec-
23 tors General Working Group established
24 under this subparagraph shall submit reg-
25 ular reports to the Oversight Council and

1 to Congress on its evaluations pursuant to
2 this subparagraph.

3 (B) WORKING GROUPS FOR FINANCIAL
4 COMPANIES UNDERGOING RESOLUTION.—

5 (i) CONVENING A WORKING GROUP.—

6 The Council of Inspectors General shall
7 convene a Council of Inspectors General
8 Working Group for each financial company
9 for which the Secretary of the Treasury
10 appoints the Federal Deposit Insurance
11 Corporation as receiver under section
12 1604.

13 (ii) PERSONNEL AND RESOURCES.—

14 The inspectors general who are members
15 of the Council of Inspectors General may
16 detail staff and resources to a Council of
17 Inspectors General Working Group estab-
18 lished under this subparagraph to enable it
19 to carry out its duties.

20 (iii) REPORTS.—Not later than 270

21 days after the appointment of the Federal
22 Deposit Insurance Corporation as receiver
23 for the financial company for which a
24 Council of Inspectors General Working
25 Group is convened under clause (i), such

Working Group shall submit to the primary financial regulatory agency and to Congress a report that includes—

(I) the reasons for such financial company's failure;

(II) the reasons for the Secretary of the Treasury's appointment of the Federal Deposit Insurance Corporation as receiver for such financial company; and

(III) recommendations for preventing future failures of financial companies.

(b) RESPONSE TO REPORT BY OVERSIGHT COUNCIL.—The Oversight Council shall include in its annual report under section 1006 responses to the concerns raised in the report of the Council of Inspectors General under subsection (a)(2)(B) for such year.

Subtitle I—Miscellaneous

SEC. 1801. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

(a) OFFICE OF MINORITY AND WOMEN INCLUSION.—

(1) ESTABLISHMENT.—Not later than 180 days following the enactment of this title, each agency

1 shall establish an Office of Minority and Women In-
2 clusion (hereinafter in this section referred to as the
3 “Office”) that shall advise the agency administrator
4 of the impact of policies and regulations of the agen-
5 cy on minority-owned and women-owned businesses
6 (as such terms are defined in subsection (c)(1)), and
7 shall be responsible for all matters of the agency re-
8 lating to diversity in management, employment, and
9 business activities, including the coordination of
10 technical assistance, in accordance with such stand-
11 ards and requirements as the Director of the Office
12 shall establish.

13 (2) CONSOLIDATION.—Each agency that has
14 assigned these or comparable responsibilities to ex-
15 isting offices shall ensure that such responsibilities
16 are consolidated within the Office.

17 (b) DIRECTOR.—

18 (1) IN GENERAL.—For each Office, the Presi-
19 dent shall appoint, by and with the advice and con-
20 sent of the Senate, a Director of Minority and
21 Women Inclusion (hereinafter in this section re-
22 ferred to as the “Director”), who shall also hold a
23 title within such agency comparable to that of other
24 senior level staff who are, as applicable, either ap-
25 pointed by the President, by and with the advice and

1 consent of the Senate, or act in a managerial capac-
2 ity that requires reporting directly to the agency ad-
3 ministrator.

4 (2) DUTIES.—Each Director shall—

5 (A) ensure equal employment opportunity
6 and the racial, ethnic and gender diversity of
7 the agency’s workforce and senior management;

8 (B) increase the participation of minority-
9 owned and women-owned businesses in the pro-
10 grams and contracts of the agency;

11 (C) provide guidance to the agency admin-
12 istrator to ensure that the policies and regula-
13 tions of the agency strengthen minority-owned
14 and women-owned businesses; and

15 (D) conduct an assessment, as part of the
16 examination process for the entities regulated
17 or monitored by the agency of the diversity and
18 inclusion efforts by such entities.

19 (c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-
20 TIES.—

21 (1) IN GENERAL.—Each Director shall develop
22 and implement standards and procedures to ensure,
23 to the maximum extent possible, the inclusion and
24 utilization of minorities (as such term is defined in
25 section 1204(c) of the Financial Institutions Re-

1 form, Recovery, and Enforcement Act of 1989 (12
2 U.S.C. 1811 note)), women, and minority-owned and
3 women-owned businesses (as such terms are defined
4 in section 21A(r)(4) of the Federal Home Loan
5 Bank Act (12 U.S.C. 1441a(r)(4)) (including finan-
6 cial institutions, investment banking firms, mortgage
7 banking firms, asset management firms, broker-deal-
8 ers, financial services firms, underwriters, account-
9 ants, brokers, investment consultants, and providers
10 of legal services) in all business and activities of the
11 agency at all levels, including in procurement, insur-
12 ance, and all types of contracts (including, as appli-
13 cable, contracts for the issuance or guarantee of any
14 debt, equity, or security, the sale of assets, the man-
15 agement of its assets, the making of its equity in-
16 vestments, and the implementation of programs to
17 address economic recovery).

18 (2) CONTRACTS.—The processes established by
19 each agency for review and evaluation for contract
20 proposals and to hire service providers shall include
21 a component that gives consideration to the diversity
22 of the applicant.

23 (3) WRITTEN ASSURANCE.—All such contract
24 proposals, provided such proposals are of an amount
25 greater than \$50,000 and the contractor employs

1 more than 50 employees, shall include a written as-
2 surance, in a form and substance that the Director
3 shall prescribe, that the contractor shall ensure, to
4 the maximum extent possible, the inclusion of mi-
5 norities and women in its workforce and, as applica-
6 ble, by its subcontractors.

7 (4) TERMINATION.—A Director may terminate
8 any contract upon a finding that the contractor has
9 failed to make a good faith effort to comply with
10 paragraph (3), except that a contractor may appeal
11 such finding and termination to the agency adminis-
12 trator within a reasonable amount of time as deter-
13 mined by the Director.

14 (d) APPLICABILITY.—This section shall apply to all
15 contracts of an agency for services of any kind, including
16 services that require the services of investment banking,
17 asset management entities, broker-dealers, financial serv-
18 ices entities, underwriters, accountants, investment con-
19 sultants, and providers of legal services.

20 (e) REPORTS.—Not later than 90 days before the end
21 of each Federal fiscal year, each Director shall report to
22 the Congress detailed information describing the actions
23 taken by the agency and the Director pursuant to this sec-
24 tion, which shall—

1 (1) to the extent contracts exceed the contract
2 amount and employment levels established in sub-
3 section (c)(3), include a statement of the total
4 amounts paid by the agency to third party contrac-
5 tors since the last such report;

6 (2) the percentage of such amounts paid to
7 businesses described in subsection (c)(1);

8 (3) the successes achieved and challenges faced
9 by the agency in operating minority and women out-
10 reach programs;

11 (4) the challenges the agency may face in hiring
12 qualified minority and women employees and con-
13 tracting with qualified minority-owned and women-
14 owned businesses; and

15 (5) such other information, findings, conclu-
16 sions, and recommendations for legislative or agency
17 action, as the Director may determine to be appro-
18 priate to include in such report.

19 (f) DIVERSITY IN AGENCY WORKFORCE.—Each
20 agency shall take affirmative steps to seek diversity in its
21 workforce at all levels of the agency consistent with the
22 demographic diversity of the United States and the Fed-
23 eral government, which shall include—

24 (1) heavily recruiting at historically black col-
25 leges and universities, Hispanic-serving institutions,

1 women's colleges, and colleges that typically serve
2 majority minority populations;

3 (2) sponsoring and recruiting at job fairs in
4 urban communities, and placing employment adver-
5 tisements in newspapers and magazines oriented to-
6 ward women and people of color;

7 (3) partnering with organizations that are fo-
8 cused on developing opportunities for minorities and
9 women to place talented young minorities and
10 women in industry internships, summer employment,
11 and full-time positions;

12 (4) where feasible, partnering with inner-city
13 high schools, girls' high schools, and high schools
14 with majority minority populations to establish or
15 enhance financial literacy programs and provide
16 mentoring; and

17 (5) such other mass media communications that
18 the Director determines are necessary.

19 (g) DEFINITIONS.—For purposes of this section:

20 (1) AGENCY.—The term “agency” means—

21 (A) the Department of the Treasury;

22 (B) the Federal Deposit Insurance Cor-
23 poration;

24 (C) the Federal Housing Finance Agency;

25 (D) each of the Federal reserve banks;

1 (E) the Board;

2 (F) the National Credit Union Administra-
3 tion;

4 (G) the Office of the Comptroller of the
5 Currency;

6 (H) the Office of Thrift Supervision;

7 (I) the Securities and Exchange Commis-
8 sion;

9 (J) the Consumer Financial Protection
10 Agency; and

11 (K) the Federal Insurance Office,
12 and any successors to such entities.

13 (2) AGENCY ADMINISTRATOR.—The term
14 “agency administrator” means the head of an agen-
15 cy.

16 **SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY**
17 **ROLE IN FIEC.**

18 After section 1007 of the Federal Financial Institu-
19 tions Examination Council Act of 1987 (12 U.S.C. 3306)
20 insert the following new section:

21 **“SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVI-**
22 **SORY ROLE.**

23 “Whenever the Council takes any actions with respect
24 to issues that relate to the Federal National Mortgage As-
25 sociation, the Federal Home Loan Mortgage Corporation,

1 or the Federal home loan banks, the Federal Housing Fi-
2 nance Agency shall participate in the Council’s pro-
3 ceedings in an advisory role.”.

4 **Subtitle J—International Policy** 5 **Coordination**

6 **SEC. 1901. INTERNATIONAL POLICY COORDINATION.**

7 The President of the United States, or a designee of
8 the President, shall coordinate through all available inter-
9 national policy channels similar policies as found in United
10 States law related to limiting the scope, nature, size, scale,
11 concentration, and interconnectedness of financial compa-
12 nies in order to protect financial stability and the global
13 economy.

14 **Subtitle K—International Financial** 15 **Provisions**

16 **SEC. 1951. ACCESS TO UNITED STATES FINANCIAL MARKET** 17 **BY FOREIGN INSTITUTIONS.**

18 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN
19 THE UNITED STATES.—Subsection 7(d)(3) of the Inter-
20 national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is
21 amended—

22 (1) by striking “and” at the end of subpara-
23 graph (C);

24 (2) by striking the period at the end of sub-
25 paragraph (D) and inserting “; and”; and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(E) for a foreign bank that presents a
4 systemic risk to the United States, whether the
5 home country of the foreign bank has adopted,
6 or is making demonstrable progress toward
7 adopting, an appropriate system of financial
8 regulation for the financial system of such
9 home country to mitigate such systemic risk.”.

10 (b) TERMINATION OF FOREIGN BANK OFFICES IN
11 THE UNITED STATES.—Subsection 7(e)(1) of the Inter-
12 national Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is
13 amended—

14 (1) by striking “or” at the end of subparagraph
15 (A);

16 (2) by striking the period at the end of sub-
17 paragraph (B) and inserting “; or”; and

18 (3) by inserting after subparagraph (B), the
19 following new subparagraph:

20 “(C) for a foreign bank that presents a
21 systemic risk to the United States, the home
22 country of the foreign bank has not adopted or
23 made demonstrable progress toward adopting
24 an appropriate system of financial regulation to
25 mitigate such systemic risk.”.

1 (c) REGISTRATION OR SUCCESSION TO UNITED
2 STATES BROKERAGE OR DEALER AND TERMINATION OF
3 SUCH REGISTRATION.—Section 15 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78o) is amended by adding
5 at the end the following new subsections:

6 “(k) REGISTRATION OR SUCCESSION TO A UNITED
7 STATES BROKER OR DEALER.—In determining whether
8 to permit a foreign person or an affiliate of a foreign per-
9 son to register as a United States broker or dealer, or
10 succeed to the registration of a United States broker or
11 dealer, the Securities and Exchange Commission may con-
12 sider whether, for a foreign person, or an affiliate of a
13 foreign person that presents a systemic risk to the United
14 States, the home country of the foreign person has adopt-
15 ed or made demonstrable progress toward adopting an ap-
16 propriate system of financial regulation to mitigate such
17 systemic risk.

18 “(l) TERMINATION OF A UNITED STATES BROKER
19 OR DEALER.—For a foreign person or an affiliate of a
20 foreign person that presents such a systemic risk to the
21 United States, the Securities and Exchange Commission
22 may determine to terminate the registration of such for-
23 eign person or an affiliate of such foreign person as a
24 broker or dealer in the United States if the Commission
25 determines that the home country of the foreign person

1 has not adopted, or made demonstrable progress toward
 2 adopting, an appropriate system of financial regulation to
 3 mitigate such systemic risk.”.

4 **SEC. 1952. REDUCING TARP FUNDS TO OFFSET COSTS.**

5 Section 115(a)(3) of the Emergency Economic Sta-
 6 bilization Act of 2008 (12 U.S.C. 5225(a)(3)) is amended
 7 by striking “\$700,000,000,000, as such amount is re-
 8 duced by \$1,259,000,000,, as such amount is reduced by
 9 \$1,244,000,000, outstanding at any one time” and insert-
 10 ing “\$700,000,000,000, as such amount is reduced by
 11 \$23,625,000,000, outstanding at any one time”.

12 **Subtitle L—Securities Holding**
 13 **Companies**

14 **SEC. 1961. SECURITIES HOLDING COMPANIES.**

15 (a) SUPERVISION OF A SECURITIES HOLDING COM-
 16 PANY NOT HAVING A BANK OR SAVINGS ASSOCIATION
 17 AFFILIATE.—

18 (1) IN GENERAL.—A securities holding com-
 19 pany that is required by a foreign regulator or for-
 20 eign law to be subject to comprehensive consolidated
 21 supervision and that is not—

22 (A) a financial holding company subject to
 23 stricter standards;

24 (B) an affiliate of an insured bank (other
 25 than an institution described in subparagraphs

1 (D) or (G) of section 2(c)(2) of the Bank Hold-
2 ing Company Act of 1956) or a savings associa-
3 tion;

4 (C) a foreign bank, foreign company, or
5 company that is described in section 8(a) of the
6 International Banking Act of 1978;

7 (D) a foreign bank that controls, directly
8 or indirectly, a corporation chartered under sec-
9 tion 25A of the Federal Reserve Act (12 U.S.C.
10 611 et seq.); or

11 (E) subject to comprehensive consolidated
12 supervision by a foreign regulator,

13 may register with the Board to become supervised,
14 pursuant to paragraph (2). Any securities holding
15 company filing such a registration shall be super-
16 vised in accordance with this section and comply
17 with the rules and orders prescribed by the Board
18 applicable to supervised securities holding compa-
19 nies.

20 (2) REGISTRATION AS A SUPERVISED SECURI-
21 TIES HOLDING COMPANY.—A securities holding com-
22 pany described in paragraph (1) shall register by fil-
23 ing with the Board such information and documents
24 concerning such securities holding company as the
25 Board, by regulation, may prescribe as necessary or

1 appropriate in furtherance of the purposes of this
2 section. Such supervision shall become effective 45
3 days after the date of receipt of such registration by
4 the Board or within such shorter time period as the
5 Board, by rule or order, may determine.

6 (b) SUPERVISION OF SECURITIES HOLDING COMPA-
7 NIES.—

8 (1) RECORDKEEPING AND REPORTING.—

9 (A) IN GENERAL.—Every supervised secu-
10 rities holding company and each affiliate of
11 such company shall make and keep for pre-
12 scribed periods such records, furnish copies of
13 records, and make such reports, as the Board
14 determines to be necessary or appropriate for
15 the Board to carry out the purposes of this sec-
16 tion, prevent evasions, and monitor compliance
17 by the company or affiliate with applicable pro-
18 visions of law.

19 (B) FORM AND CONTENTS.—Such records
20 and reports shall be prepared in such form and
21 according to such specifications (including cer-
22 tification by a registered public accounting
23 firm), as the Board may require and shall be
24 provided promptly at any time upon request by

1 the Board. Such records and reports may in-
2 clude—

3 (i) a balance sheet and income state-
4 ment;

5 (ii) an assessment of the consolidated
6 capital of the supervised securities holding
7 company;

8 (iii) an independent auditor's report
9 attesting to the supervised securities hold-
10 ing company's compliance with its internal
11 risk management and internal control ob-
12 jectives; and

13 (iv) reports concerning the extent to
14 which the company or affiliate has com-
15 plied with the provisions of this section
16 and any regulations prescribed and orders
17 issued under this section.

18 (2) USE OF EXISTING REPORTS.—

19 (A) IN GENERAL.—The Board shall, to the
20 fullest extent possible, accept reports in fulfill-
21 ment of the requirements under this paragraph
22 that the supervised securities holding company
23 or its affiliates have been required to provide to
24 another appropriate regulatory agency or self-
25 regulatory organization.

1 (B) AVAILABILITY.—A supervised securi-
2 ties holding company or an affiliate of such
3 company shall provide to the Board, at the re-
4 quest of the Board, any report referred to in
5 subparagraph (A), as permitted by law.

6 (3) EXAMINATION AUTHORITY.—

7 (A) FOCUS OF EXAMINATION AUTHOR-
8 ITY.—The Board may make examinations of
9 any supervised securities holding company and
10 any affiliate of such company to carry out the
11 purposes of this subsection, prevent evasions
12 thereof, and monitor compliance by the com-
13 pany or affiliate with applicable provisions of
14 law.

15 (B) DEFERENCE TO OTHER EXAMINA-
16 TIONS.—For purposes of this subparagraph, the
17 Board shall, to the fullest extent possible, use
18 the reports of examination made by other ap-
19 propriate Federal or State regulatory authori-
20 ties with respect to any functionally regulated
21 subsidiary, as defined under section 5(c)(1) of
22 the Bank Holding Company Act of 1956 (12
23 U.S.C. 1844(c)(1)), or an institution described
24 in subparagraphs (D) or (G) of section
25 1841(c)(2).

1 (c) CAPITAL AND RISK MANAGEMENT.—

2 (1) The Board shall, by regulation or order,
3 prescribe capital adequacy and other risk manage-
4 ment standards for a supervised securities holding
5 company appropriate to protect the safety and
6 soundness of the company and address the risks
7 posed to financial stability by a supervised securities
8 holding company. Standards imposed under this sub-
9 paragraph shall take account of differences among
10 types of business activities and—

11 (A) the amount and nature of the com-
12 pany's financial assets;

13 (B) the amount and nature of the com-
14 pany's liabilities, including the degree of reli-
15 ance on short-term funding;

16 (C) the extent and nature of the company's
17 off-balance sheet exposures;

18 (D) the extent and nature of the com-
19 pany's transactions and relationships with other
20 financial companies;

21 (E) the company's importance as a source
22 of credit for households, businesses, and State
23 and local governments and as a source of li-
24 quidity for the financial system; and

1 (F) the nature, scope, and mix of the com-
2 pany's activities.

3 (2) In imposing standards under this sub-
4 section, the Board may differentiate among super-
5 vised securities holding companies on an individual
6 basis or by category, taking into consideration the
7 criteria specified above.

8 (3) Any capital requirements imposed under
9 this subsection shall not take effect until the expira-
10 tion of 180 days after a supervised securities holding
11 company is provided notice of such requirement.

12 (d) OTHER PROVISIONS.—

13 (1) Subsections (b), (c) through (s), and (u) of
14 section 8 of the Federal Deposit Insurance Act shall
15 apply to any supervised securities holding company,
16 and to any subsidiary (other than a bank) of a su-
17 pervised securities holding company, in the same
18 manner as they apply to a bank holding company.
19 For purposes of applying such subsections to a su-
20 pervised securities holding company or a subsidiary
21 (other than a bank) of a supervised securities hold-
22 ing company, the Board shall be considered the ap-
23 propriate Federal banking agency for the supervised
24 securities holding company or subsidiary.

1 (2) Except as the Board may otherwise provide
2 by regulation or order, a supervised securities hold-
3 ing company shall be subject to the provisions of the
4 Bank Holding Company Act of 1956 (12 U.S.C.
5 1841 et seq.) in the same manner and to the same
6 extent that bank holding companies are subject to
7 such provisions, except that any such supervised se-
8 curities holding company shall not by reason of this
9 subparagraph be deemed a bank holding company
10 for purposes of section 4 of the Bank Holding Com-
11 pany Act of 1956.

12 (e) DEFINITIONS.—For purposes of this section, the
13 following definitions shall apply:

14 (1) SECURITIES HOLDING COMPANY.—The term
15 “securities holding company” means—

16 (A) any person other than a natural per-
17 son that owns or controls one or more brokers
18 or dealers as defined in section 3 of the Securi-
19 ties Exchange Act; and

20 (B) the associated persons of the securities
21 holding company.

22 (2) SUPERVISED SECURITIES HOLDING COM-
23 PANY.—The term “supervised securities holding
24 company” means any securities holding company

1 that is supervised by the Board pursuant to this sec-
2 tion.

3 (3) OTHER BANKING TERMS.—The terms “af-
4 filiate”, “bank”, “bank holding company”, “com-
5 pany”, “control”, “savings association”, and “sub-
6 sidiary” have the same meanings as in section 2 of
7 the Bank Holding Company Act of 1956.

8 (4) INSURED BANK.—The term “insured bank”
9 has the same meaning as in section 13 of the Fed-
10 eral Deposit Insurance Act.

11 (5) FOREIGN BANK.—The term “foreign bank”
12 has the same meaning as in section 1(b)(7) of the
13 International Banking Act of 1978.

14 (6) ASSOCIATED PERSONS.—The terms “person
15 associated with a securities holding company” and
16 “associated person of a securities holding company”
17 mean any person directly or indirectly controlling,
18 controlled by, or under common control with, a secu-
19 rities holding company.

20 **TITLE II—CORPORATE AND FI-**
21 **NANCIAL INSTITUTION COM-**
22 **PENSATION FAIRNESS ACT**

23 **SEC. 2001. SHORT TITLE.**

24 This title may be cited as the “Corporate and Finan-
25 cial Institution Compensation Fairness Act of 2009”.

1 **SEC. 2002. SHAREHOLDER VOTE ON EXECUTIVE COM-**
2 **PENSATION DISCLOSURES.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n) is amended by adding at the end the fol-
5 lowing new subsection:

6 “(i) ANNUAL SHAREHOLDER APPROVAL OF EXECU-
7 TIVE COMPENSATION.—

8 “(1) ANNUAL VOTE.—Any proxy or consent or
9 authorization (the solicitation of which is subject to
10 the rules of the Commission pursuant to subsection
11 (a)) for an annual meeting of the shareholders to
12 elect directors (or a special meeting in lieu of such
13 meeting) where proxies are solicited in respect of
14 any security registered under section 12 occurring
15 on or after the date that is 6 months after the date
16 on which final rules are issued under paragraph (4),
17 shall provide for a separate shareholder vote to ap-
18 prove the compensation of executives as disclosed
19 pursuant to the Commission’s compensation disclo-
20 sure rules for named executive officers (which disclo-
21 sure shall include the compensation committee re-
22 port, the compensation discussion and analysis, the
23 compensation tables, and any related materials, to
24 the extent required by such rules). The shareholder
25 vote shall not be binding on the issuer or the board
26 of directors and shall not be construed as overruling

1 a decision by such board, nor to create or imply any
2 additional fiduciary duty by such board, nor shall
3 such vote be construed to restrict or limit the ability
4 of shareholders to make proposals for inclusion in
5 such proxy materials related to executive compensa-
6 tion.

7 “(2) SHAREHOLDER APPROVAL OF GOLDEN
8 PARACHUTE COMPENSATION.—

9 “(A) DISCLOSURE.—In any proxy or con-
10 sent solicitation material (the solicitation of
11 which is subject to the rules of the Commission
12 pursuant to subsection (a)) for a meeting of the
13 shareholders occurring on or after the date that
14 is 6 months after the date on which final rules
15 are issued under paragraph (4), at which share-
16 holders are asked to approve an acquisition,
17 merger, consolidation, or proposed sale or other
18 disposition of all or substantially all the assets
19 of an issuer, the person making such solicita-
20 tion shall disclose in the proxy or consent solici-
21 tation material, in a clear and simple form in
22 accordance with regulations to be promulgated
23 by the Commission, any agreements or under-
24 standings that such person has with any named
25 executive officers of such issuer (or of the ac-

1 quiring issuer, if such issuer is not the acquir-
2 ing issuer) concerning any type of compensation
3 (whether present, deferred, or contingent) that
4 is based on or otherwise relates to the acquisi-
5 tion, merger, consolidation, sale, or other dis-
6 position of all or substantially all of the assets
7 of the issuer and the aggregate total of all such
8 compensation that may (and the conditions
9 upon which it may) be paid or become payable
10 to or on behalf of such executive officer.

11 “(B) SHAREHOLDER APPROVAL.—Any
12 proxy or consent or authorization relating to
13 the proxy or consent solicitation material con-
14 taining the disclosure required by subparagraph
15 (A) shall provide for a separate shareholder
16 vote to approve such agreements or under-
17 standings and compensation as disclosed, unless
18 such agreements or understandings have been
19 subject to a shareholder vote under paragraph
20 (1). A vote by the shareholders shall not be
21 binding on the issuer or the board of directors
22 of the issuer or the person making the solicita-
23 tion and shall not be construed as overruling a
24 decision by any such person or issuer, nor to

1 create or imply any additional fiduciary duty by
2 any such person or issuer.

3 “(3) DISCLOSURE OF VOTES.—Every institu-
4 tional investment manager subject to section 13(f)
5 shall report at least annually how it voted on any
6 shareholder vote pursuant to paragraph (1) or (2) of
7 this section, unless such vote is otherwise required to
8 be reported publicly by rule or regulation of the
9 Commission.

10 “(4) RULEMAKING.—Not later than 6 months
11 after the date of the enactment of the Corporate and
12 Financial Institution Compensation Fairness Act of
13 2009, the Commission shall issue final rules to im-
14 plement this subsection.

15 “(5) EXEMPTION AUTHORITY.—The Commis-
16 sion may exempt certain categories of issuers from
17 the requirements of this subsection, where appro-
18 priate in view of the purpose of this subsection. In
19 determining appropriate exemptions, the Commis-
20 sion shall take into account, among other consider-
21 ations, the potential impact on smaller reporting
22 issuers.”.

23 **SEC. 2003. COMPENSATION COMMITTEE INDEPENDENCE.**

24 (a) STANDARDS RELATING TO COMPENSATION COM-
25 MITTEES.—The Securities Exchange Act of 1934 (15

1 U.S.C. 78a et seq.) is amended by inserting after section
2 10A the following new section:

3 **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-**
4 **MITTEES.**

5 “(a) COMMISSION RULES.—

6 “(1) IN GENERAL.—Effective not later than 9
7 months after the date of enactment of the Corporate
8 and Financial Institution Compensation Fairness
9 Act of 2009, the Commission shall, by rule, direct
10 the national securities exchanges and national secu-
11 rities associations to prohibit the listing of any class
12 of equity security of an issuer that is not in compli-
13 ance with the requirements of any portion of sub-
14 sections (b) through (f).

15 “(2) OPPORTUNITY TO CURE DEFECTS.—The
16 rules of the Commission under paragraph (1) shall
17 provide for appropriate procedures for an issuer to
18 have an opportunity to cure any defects that would
19 be the basis for a prohibition under paragraph (1)
20 before the imposition of such prohibition.

21 “(3) EXEMPTION AUTHORITY.—The Commis-
22 sion may exempt certain categories of issuers from
23 the requirements of subsections (b) through (f),
24 where appropriate in view of the purpose of this sec-
25 tion. In determining appropriate exemptions, the

1 Commission shall take into account, among other
2 considerations, the potential impact on smaller re-
3 porting issuers.

4 “(b) INDEPENDENCE OF COMPENSATION COMMIT-
5 TEES.—

6 “(1) IN GENERAL.—Each member of the com-
7 pensation committee of the board of directors of the
8 issuer shall be independent.

9 “(2) CRITERIA.—In order to be considered to
10 be independent for purposes of this subsection, a
11 member of a compensation committee of an issuer
12 may not, other than in his or her capacity as a
13 member of the compensation committee, the board
14 of directors, or any other board committee accept
15 any consulting, advisory, or other compensatory fee
16 from the issuer.

17 “(3) EXEMPTION AUTHORITY.—The Commis-
18 sion may exempt from the requirements of para-
19 graph (2) a particular relationship with respect to
20 compensation committee members, where appro-
21 priate in view of the purpose of this section.

22 “(4) DEFINITION.—As used in this section, the
23 term ‘compensation committee’ means—

24 “(A) a committee (or equivalent body) es-
25 tablished by and amongst the board of directors

1 of an issuer for the purpose of determining and
2 approving the compensation arrangements for
3 the executive officers of the issuer; and

4 “(B) if no such committee exists with re-
5 spect to an issuer, the independent members of
6 the entire board of directors.

7 “(c) INDEPENDENCE STANDARDS FOR COMPENSA-
8 TION CONSULTANTS AND OTHER COMMITTEE ADVI-
9 SORS.—Any compensation consultant or other similar ad-
10 viser to the compensation committee of any issuer shall
11 meet standards for independence established by the Com-
12 mission by regulation.

13 “(d) COMPENSATION COMMITTEE AUTHORITY RE-
14 LATING TO COMPENSATION CONSULTANTS.—

15 “(1) IN GENERAL.—The compensation com-
16 mittee of each issuer, in its capacity as a committee
17 of the board of directors, shall have the authority,
18 in its sole discretion, to retain and obtain the advice
19 of a compensation consultant meeting the standards
20 for independence promulgated pursuant to sub-
21 section (c), and the compensation committee shall be
22 directly responsible for the appointment, compensa-
23 tion, and oversight of the work of such independent
24 compensation consultant. This provision shall not be
25 construed to require the compensation committee to

1 implement or act consistently with the advice or rec-
2 ommendations of the compensation consultant, and
3 shall not otherwise affect the compensation commit-
4 tee’s ability or obligation to exercise its own judg-
5 ment in fulfillment of its duties.

6 “(2) DISCLOSURE.—In any proxy or consent
7 solicitation material for an annual meeting of the
8 shareholders (or a special meeting in lieu of the an-
9 nual meeting) occurring on or after the date that is
10 1 year after the date of enactment of the Corporate
11 and Financial Institution Compensation Fairness
12 Act of 2009, each issuer shall disclose in the proxy
13 or consent material, in accordance with regulations
14 to be promulgated by the Commission whether the
15 compensation committee of the issuer retained and
16 obtained the advice of a compensation consultant
17 meeting the standards for independence promulgated
18 pursuant to subsection (c).

19 “(3) REGULATIONS.—In promulgating regula-
20 tions under this subsection or any other provision of
21 law with respect to compensation consultants, the
22 Commission shall ensure that such regulations are
23 competitively neutral among categories of consult-
24 ants and preserve the ability of compensation com-

1 mittees to retain the services of members of any
2 such category.

3 “(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-
4 SEL AND OTHER ADVISORS.—The compensation com-
5 mittee of each issuer, in its capacity as a committee of
6 the board of directors, shall have the authority, in its sole
7 discretion, to retain and obtain the advice of independent
8 counsel and other advisers meeting the standards for inde-
9 pendence promulgated pursuant to subsection (c), and the
10 compensation committee shall be directly responsible for
11 the appointment, compensation, and oversight of the work
12 of such independent counsel and other advisers. This pro-
13 vision shall not be construed to require the compensation
14 committee to implement or act consistently with the advice
15 or recommendations of such independent counsel and
16 other advisers, and shall not otherwise affect the com-
17 pensation committee’s ability or obligation to exercise its
18 own judgment in fulfillment of its duties.

19 “(f) FUNDING.—Each issuer shall provide for appro-
20 priate funding, as determined by the compensation com-
21 mittee, in its capacity as a committee of the board of direc-
22 tors, for payment of compensation—

23 “(1) to any compensation consultant to the
24 compensation committee that meets the standards

1 for independence promulgated pursuant to sub-
2 section (c); and

3 “(2) to any independent counsel or other ad-
4 viser to the compensation committee.”.

5 (b) STUDY AND REVIEW REQUIRED.—

6 (1) IN GENERAL.—The Securities and Ex-
7 change Commission shall conduct a study and review
8 of the use of compensation consultants meeting the
9 standards for independence promulgated pursuant to
10 section 10B(c) of the Securities Exchange Act of
11 1934 (as added by subsection (a)), and the effects
12 of such use.

13 (2) REPORT TO CONGRESS.—Not later than 2
14 years after the rules required by the amendment
15 made by this section take effect, the Commission
16 shall submit a report to the Congress on the results
17 of the study and review required by this paragraph.

18 **SEC. 2004. ENHANCED COMPENSATION STRUCTURE RE-**
19 **PORTING TO REDUCE PERVERSE INCEN-**
20 **TIVES.**

21 (a) ENHANCED DISCLOSURE AND REPORTING OF
22 COMPENSATION ARRANGEMENTS.—

23 (1) IN GENERAL.—Not later than 9 months
24 after the date of enactment of this title, the appro-
25 priate Federal regulators jointly shall prescribe regu-

1 lations to require each covered financial institution
2 to disclose to the appropriate Federal regulator the
3 structures of all incentive-based compensation ar-
4 rangements offered by such covered financial institu-
5 tions sufficient to determine whether the compensa-
6 tion structure—

7 (A) is aligned with sound risk manage-
8 ment;

9 (B) is structured to account for the time
10 horizon of risks; and

11 (C) meets such other criteria as the appro-
12 priate Federal regulators jointly may determine
13 to be appropriate to reduce unreasonable incen-
14 tives offered by such institutions for employees
15 to take undue risks that—

16 (i) could threaten the safety and
17 soundness of covered financial institutions;
18 or

19 (ii) could have serious adverse effects
20 on economic conditions or financial sta-
21 bility.

22 (2) RULES OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed as requiring the
24 reporting of the actual compensation of particular
25 individuals. Nothing in this subsection shall be con-

1 strued to require a covered financial institution that
2 does not have an incentive-based payment arrange-
3 ment to make the disclosures required under this
4 subsection.

5 (b) PROHIBITION ON CERTAIN COMPENSATION AR-
6 RANGEMENTS.—Not later than 9 months after the date
7 of enactment of this title, and taking into account the fac-
8 tors described in subparagraphs (A), (B), and (C) of sub-
9 section (a)(1), the appropriate Federal regulators shall
10 jointly prescribe regulations that prohibit any incentive-
11 based payment arrangement, or any feature of any such
12 arrangement, that the regulators determine encourages in-
13 appropriate risks by covered financial institutions that—

14 (1) could threaten the safety and soundness of
15 covered financial institutions; or

16 (2) could have serious adverse effects on eco-
17 nomic conditions or financial stability.

18 (c) ENFORCEMENT.—The provisions of this section
19 shall be enforced under section 505 of the Gramm-Leach-
20 Bliley Act and, for purposes of such section, a violation
21 of this section shall be treated as a violation of subtitle
22 A of title V of such Act.

23 (d) DEFINITIONS.—As used in this section—

24 (1) the term “appropriate Federal regulator”
25 means—

1 (A) the Board of Governors of the Federal
2 Reserve System;

3 (B) the Office of the Comptroller of the
4 Currency;

5 (C) the Board of Directors of the Federal
6 Deposit Insurance Corporation;

7 (D) the Director of the Office of Thrift
8 Supervision;

9 (E) the National Credit Union Administra-
10 tion Board;

11 (F) the Securities and Exchange Commis-
12 sion; and

13 (G) the Federal Housing Finance Agency;
14 and

15 (2) the term “covered financial institution”
16 means—

17 (A) a depository institution or depository
18 institution holding company, as such terms are
19 defined in section 3 of the Federal Deposit In-
20 surance Act (12 U.S.C. 1813);

21 (B) a broker-dealer registered under sec-
22 tion 15 of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o);

24 (C) a credit union, as described in section
25 19(b)(1)(A)(iv) of the Federal Reserve Act;

1 (D) an investment advisor, as such term is
2 defined in section 202(a)(11) of the Investment
3 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

4 (E) the Federal National Mortgage Asso-
5 ciation;

6 (F) the Federal Home Loan Mortgage
7 Corporation; and

8 (G) any other financial institution that the
9 appropriate Federal regulators, jointly, by rule,
10 determine should be treated as a covered finan-
11 cial institution for purposes of this section.

12 (e) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-
13 TIONS.—The requirements of this section shall not apply
14 to covered financial institutions with assets of less than
15 \$1,000,000,000.

16 (f) LIMITATION.—No regulation promulgated pursu-
17 ant to this section shall be allowed to require the recovery
18 of incentive-based compensation under compensation ar-
19 rangements in effect on the date of enactment of this title,
20 provided such compensation agreements are for a period
21 of no more than 24 months. Nothing in this title shall
22 prevent or limit the recovery of incentive-based compensa-
23 tion under any other applicable law.

24 (g) GAO STUDY.—

25 (1) STUDY REQUIRED.—

1 (A) IN GENERAL.—The Comptroller Gen-
2 eral of the United States shall carry out a
3 study to determine whether there is a correla-
4 tion between compensation structures and ex-
5 cessive risk taking.

6 (B) FACTORS TO CONSIDER.—In carrying
7 out the study required under subparagraph (A),
8 the Comptroller General shall—

9 (i) consider compensation structures
10 used by companies from 2000 to 2008; and

11 (ii) compare companies that failed, or
12 nearly failed but for government assist-
13 ance, to companies that remained viable
14 throughout the housing and credit market
15 crisis of 2007 and 2008, including the
16 compensation practices of all such compa-
17 nies.

18 (C) DETERMINING COMPANIES THAT
19 FAILED OR NEARLY FAILED.—In determining
20 whether a company failed, or nearly failed but
21 for government assistance, for purposes of sub-
22 paragraph (B)(ii), the Comptroller General
23 shall focus on—

24 (i) companies that received excep-
25 tional assistance under the Troubled Asset

1 Relief Program under title I of the Emer-
2 gency Economic Stabilization Act of 2008
3 (12 U.S.C. 5211 et seq.) or other forms of
4 significant government assistance, includ-
5 ing under the Automotive Industry Financ-
6 ing Program, the Targeted Investment
7 Program, the Asset Guarantee Program,
8 and the Systemically Significant Failing
9 Institutions Program;

10 (ii) the Federal National Mortgage
11 Association;

12 (iii) the Federal Home Loan Mort-
13 gage Corporation; and

14 (iv) companies that participated in the
15 Security and Exchange Commission's Con-
16 solidated Supervised Entities Program as
17 of January 2008.

18 (2) REPORT.—Not later than the end of the 1-
19 year period beginning on the date of the enactment
20 of this title, the Comptroller General shall issue a re-
21 port to the Congress containing the results of the
22 study required under paragraph (1).

1 **TITLE III—DERIVATIVE MAR-**
2 **KETS TRANSPARENCY AND**
3 **ACCOUNTABILITY ACT**

4 **SEC. 3001. SHORT TITLE.**

5 This title may be cited as the “Derivative Markets
6 Transparency and Accountability Act of 2009”.

7 **SEC. 3002. REVIEW OF REGULATORY AUTHORITY.**

8 (a) CONSULTATION.—

9 (1) CFTC.—Before commencing any rule-
10 making or issuing an order regarding swaps, swap
11 dealers, major swap participants, swap repositories,
12 persons associated with a swap dealer or major swap
13 participant, eligible contract participants, or swap
14 execution facilities pursuant to subtitle A, the Com-
15modity Futures Trading Commission shall consult
16 with the Securities and Exchange Commission and
17 the Prudential Regulators.

18 (2) SEC.—Before commencing any rulemaking
19 or issuing an order regarding security-based swaps,
20 security-based swap dealers, major security-based
21 swap participants, security-based swap repositories,
22 persons associated with a security-based swap dealer
23 or major security-based swap participant, eligible
24 contract participants with regard to security-based
25 swaps, or swap execution facilities pursuant to sub-

1 title B, the Securities and Exchange Commission
2 shall consult with the Commodity Futures Trading
3 Commission and the Prudential Regulators.

4 (3) In developing and promulgating rules or or-
5 ders pursuant to this subsection, the Commodity Fu-
6 tures Trading Commission and the Securities and
7 Exchange Commission shall consider each other's
8 views and the views of the Prudential Regulators.

9 (4) In adopting a rule or order described in
10 paragraph (1) or (2), the Commodity Futures Trad-
11 ing Commission and the Securities and Exchange
12 Commission shall treat functionally or economically
13 similar products or entities similarly.

14 (5) Paragraph (4) shall not be construed to re-
15 quire the Commodity Futures Trading Commission
16 or the Securities Exchange Commission to adopt a
17 rule or order that treats functionally or economically
18 similar products or entities identically.

19 (b) LIMITATION.—

20 (1) CFTC.—Nothing in this title, unless spe-
21 cifically provided, shall be construed to confer juris-
22 diction on the Commodity Futures Trading Commis-
23 sion to issue a rule, regulation, or order providing
24 for oversight or regulation of—

25 (A) security-based swaps; or

1 (B) with regard to their activities or func-
2 tions concerning security-based swaps—

3 (i) security-based swap dealers;

4 (ii) major security-based swap partici-
5 pants;

6 (iii) security-based swap repositories;

7 (iv) persons associated with a secu-
8 rity-based swap dealer or major security-
9 based swap participant;

10 (v) eligible contract participants with
11 respect to security-based swaps; or

12 (vi) swap execution facilities.

13 (2) SEC.—Nothing in this title, unless specifi-
14 cally provided, shall be construed to confer jurisdic-
15 tion on the Securities and Exchange Commission to
16 issue a rule, regulation, or order providing for over-
17 sight or regulation of—

18 (A) swaps; or

19 (B) with regard to their activities or func-
20 tions concerning swaps—

21 (i) swap dealers;

22 (ii) major swap participants;

23 (iii) swap repositories;

24 (iv) persons associated with a swap
25 dealer or major swap participant;

1 (v) eligible contract participants with
2 respect to swaps; or

3 (vi) swap execution facilities.

4 (c) OBJECTION TO COMMISSION REGULATION.—

5 (1) FILING OF PETITION FOR REVIEW.—If ei-
6 ther Commission referred to in this section believes
7 that a final rule, regulation, or order of the other
8 such Commission conflicts with subsection (a)(4) or
9 (b), then the complaining Commission may obtain
10 review thereof in the United States Court of Appeals
11 for the District of Columbia Circuit by filing in the
12 court, not later than 60 days after the date of publi-
13 cation of the final rule, regulation, or order, a writ-
14 ten petition requesting that the rule, regulation, or
15 order be set aside. Any such proceeding shall be ex-
16 pedited by the Court of Appeals.

17 (2) TRANSMITTAL OF PETITION AND
18 RECORD.—A copy of a petition described in para-
19 graph (1) shall be transmitted not later than 1 busi-
20 ness day after filing by the complaining Commission
21 to the Secretary of the responding Commission. On
22 receipt of the petition, the responding Commission
23 shall file with the court a copy of the rule, regula-
24 tion, or order under review and any documents re-

1 ferred to therein, and any other materials prescribed
2 by the court.

3 (3) STANDARD OF REVIEW.—The court, giving
4 deference to the views of neither Commission, shall
5 determine to affirm or set aside a rule, regulation,
6 or order of the responding Commission under this
7 subsection, based on the determination of the court,
8 as to whether the rule, regulation, or order is in con-
9 flict with subsection (a)(4) or (b), as applicable.

10 (4) JUDICIAL STAY.—The filing of a petition by
11 the complaining Commission pursuant to paragraph
12 (1) shall operate as a stay of the rule, regulation, or
13 order, until the date on which the determination of
14 the court is final (including any appeal of the deter-
15 mination).

16 (d) DEFINITIONS.—In this section, the terms “Pru-
17 dential Regulators”, “swap”, “swap dealer”, “major swap
18 participant”, “swap repository”, “person associated with
19 a swap dealer or major swap participant”, “eligible con-
20 tract participant”, “swap execution facility”, “security-
21 based swap”, “security-based swap dealer”, “major secu-
22 rity-based swap participant”, “security-based swap reposi-
23 tory”, and “person associated with a security-based swap
24 dealer or major security-based swap participant” shall
25 have the meanings provided, respectively, in the Com-

1 modity Exchange Act, including any modification of the
2 meanings under section 3101(b) of this Act.

3 (e)(1) Notwithstanding subsections (b) and (c), the
4 Commodity Futures Trading Commission and the Securi-
5 ties Exchange Commission shall jointly adopt rules to—

6 (A) define the terms “security-based swap
7 agreement” in section 3(a)(76) of the Securities Ex-
8 change Act of 1934 and “swap” in section
9 1a(35)(A)(v) of the Commodity Exchange Act;

10 (B) require the maintenance of records of all
11 activities related to transactions defined in subpara-
12 graph (A) that are not cleared; and

13 (C) make available to the Securities and Ex-
14 change Commission information relating to trans-
15 actions defined in subparagraph (A) that are
16 uncleared.

17 (2) In the event that the Commodity Futures Trading
18 Commission and the Securities Exchange Commission fail
19 to jointly prescribe rules pursuant to paragraph (1) in a
20 timely manner, at the request of either Commission, the
21 Financial Services Oversight Council shall resolve the dis-
22 pute—

23 (A) within a reasonable time after receiving the
24 request;

1 (B) after consideration of relevant information
2 provided by each Commission; and

3 (C) by agreeing with one of the Commissions
4 regarding the entirety of the matter or by deter-
5 mining a compromise position.

6 **SEC. 3003. INTERNATIONAL HARMONIZATION.**

7 (a) In order to promote effective and consistent global
8 regulation of contracts of sale of swaps and security-based
9 swaps, the Commodity Futures Trading Commission, the
10 Securities and Exchange Commission, and the Prudential
11 Regulators (as defined in section 1a(42) of the Commodity
12 Exchange Act), as appropriate, shall consult and coordi-
13 nate with foreign regulatory authorities on the establish-
14 ment of consistent international standards with respect to
15 the regulation of contracts of sale of swaps and security-
16 based swaps, and may agree to such information-sharing
17 arrangements as may be deemed to be necessary or appro-
18 priate in the public interest or for the protection of inves-
19 tors, swap counterparties, and security-based swap
20 counterparties.

21 (b) In order to promote effective and consistent global
22 regulation of contracts of sale of a commodity for future
23 delivery, the Commodity Futures Trading Commission
24 shall consult and coordinate with foreign regulatory au-
25 thorities on the establishment of consistent international

1 standards with respect to the regulation of contracts of
2 sale of a commodity for future delivery, and may agree
3 to such information-sharing arrangements as may be
4 deemed necessary or appropriate in the public interest for
5 the protection users of contracts of sale of a commodity
6 for future delivery.

7 **SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSIST-**
8 **ANCE.**

9 (a) IN GENERAL.—No provision of this title shall be
10 construed to authorize Federal assistance to support clear-
11 ing operations or liquidation of a derivatives clearing orga-
12 nization described in the Commodity Exchange Act or a
13 clearing agency described in the Securities Exchange Act
14 of 1934, except where explicitly authorized by an Act of
15 Congress.

16 (b) DEFINITION.—For the purposes of this section,
17 the term “Federal assistance” means the use of public
18 funds for the purposes of—

19 (1) making loans to, or purchasing any debt ob-
20 ligation of, a derivatives clearing organization, a
21 clearing agency, or a subsidiary of either;

22 (2) purchasing assets of a derivatives clearing
23 organization, a clearing agency, or a subsidiary of ei-
24 ther;

1 (3) assuming or guaranteeing the obligations of
2 a derivatives clearing organization, a clearing agen-
3 cy, or a subsidiary of either; or

4 (4) acquiring any type of equity interest or se-
5 curity of a derivatives clearing organization, a clear-
6 ing agency, or a subsidiary of either.

7 **SEC. 3005. STUDIES.**

8 (a) STUDY ON EFFECTS OF POSITION LIMITS ON
9 TRADING ON EXCHANGES IN THE UNITED STATES.—

10 (1) STUDY.—The Commodity Futures Trading
11 Commission, in consultation with each entity that is
12 a designated contract market under the Commodity
13 Exchange Act, shall conduct a study of the effects
14 (if any) of the position limits imposed pursuant to
15 the other provisions of this title on excessive specula-
16 tion and on the movement of transactions from ex-
17 changes in the United States to trading venues out-
18 side the United States.

19 (2) REPORT TO THE CONGRESS.—Within 12
20 months after the imposition of position limits pursu-
21 ant to the other provisions of this title, the Com-
22 modity Futures Trading Commission, in consultation
23 with each entity that is a designated contract mar-
24 ket under the Commodity Exchange Act, shall sub-

1 mit to the Congress a report on the matters de-
2 scribed in paragraph (1).

3 (3) Within 30 legislative days after the submis-
4 sion to the Congress of the report described in para-
5 graph (2), the Committee on Agriculture of the
6 House of Representatives shall hold a hearing exam-
7 ining the findings of the report.

8 (4) In addition to the study required in para-
9 graph (1), the Chairman of the Commodity Futures
10 Trading Commission shall prepare and submit to the
11 Congress biennial reports on the growth or decline
12 of the derivatives markets in the United States and
13 abroad, which shall include assessments of the
14 causes of any such growth or decline, the effective-
15 ness of regulatory regimes in managing systemic
16 risk, a comparison of the costs of compliance at the
17 time of the report for market participants subject to
18 regulation by the United States with the costs of
19 compliance in December 2008 for the market par-
20 ticipants, and the quality of the available data. In
21 preparing the report, the Chairman shall solicit the
22 views of, consult with, and address the concerns
23 raised by, market participants, regulators, legisla-
24 tors, and other interested parties.

1 (b) STUDY ON FEASIBILITY OF REQUIRING USE OF
2 STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FI-
3 NANCIAL DERIVATIVES.—

4 (1) IN GENERAL.—The Securities and Ex-
5 change Commission and the Commodity Futures
6 Trading Commission shall conduct a joint study of
7 the feasibility of requiring the derivatives industry to
8 adopt standardized computer-readable algorithmic
9 descriptions which may be used to describe complex
10 and standardized financial derivatives.

11 (2) GOALS.—The algorithmic descriptions de-
12 fined in the study shall be designed to facilitate com-
13 puterized analysis of individual derivative contracts
14 and to calculate net exposures to complex deriva-
15 tives. The algorithmic descriptions shall be optimized
16 for simultaneous use by:

17 (A) commercial users and traders of de-
18 rivatives;

19 (B) derivative clearing houses, exchanges
20 and electronic trading platforms;

21 (C) trade repositories and regulator inves-
22 tigations of market activities; and

23 (D) systemic risk regulators.

24 The study will also examine the extent to which the
25 algorithmic description, together with standardized

1 and extensible legal definitions, may serve as the
2 binding legal definition of derivative contracts. The
3 study will examine the logistics of possible imple-
4 mentations of standardized algorithmic descriptions
5 for derivatives contracts. The study shall be limited
6 to electronic formats for exchange of derivative con-
7 tract descriptions and will not contemplate disclo-
8 sure of proprietary valuation models.

9 (3) INTERNATIONAL COORDINATION.—In con-
10 ducting the study, the Securities and Exchange
11 Commission and the Commodity Futures Trading
12 Commission shall coordinate the study with inter-
13 national financial institutions and regulators as ap-
14 propriate and practical.

15 (4) REPORT.—Within 8 months after the date
16 of the enactment of this Act, the Securities and Ex-
17 change Commission and the Commodity Futures
18 Trading Commission shall jointly submit to the
19 Committees on Agriculture and on Financial Serv-
20 ices of the House of Representatives and the Com-
21 mittees on Agriculture, Nutrition, and Forestry and
22 on Banking, Housing, and Urban Affairs of the Sen-
23 ate a written report which contains the results of the
24 study required by paragraphs (1) through (3).

1 (c) STUDY OF DESIRABILITY AND FEASIBILITY OF
2 ESTABLISHING SINGLE REGULATOR FOR ALL TRANS-
3 ACTIONS INVOLVING FINANCIAL DERIVATIVES.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury, the Commodity Futures Trading Commission,
6 and the Securities and Exchange Commission shall
7 conduct a joint study of the desirability and feasi-
8 bility of establishing, by January 1, 2012, a single
9 regulator for all transactions involving financial de-
10 rivatives.

11 (2) REPORT TO THE CONGRESS.—Not later
12 than December 1, 2010, Secretary of the Treasury,
13 the Commodity Futures Trading Commission, and
14 the Securities and Exchange Commission shall joint-
15 ly submit to the Committees on Agriculture and on
16 Financial Services of the House of Representatives
17 and the Committees on Agriculture, Nutrition, and
18 Forestry and on Banking, Housing, and Urban Af-
19 fairs of the Senate a written report that contains the
20 results of the study required by paragraph (1).

21 **SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOL-**
22 **VENCY LAWS.**

23 Not later than 180 days after the date of the enact-
24 ment of this Act, the Securities and Exchange Commis-
25 sion, the Commodity Futures Trading Commission, and

1 the Prudential Regulators (as defined in section 1a of the
2 Commodity Exchange Act, as amended by section 3111
3 of this Act) shall transmit to Congress recommendations
4 for legislative changes to the Federal insolvency laws—

5 (1) in order to enhance the legal certainty with
6 respect to swap participants clearing non-proprietary
7 swap positions with a swap clearinghouse, includ-
8 ing—

9 (A) customer rights to recover margin de-
10 posits or custodial property held at or through
11 an insolvent swap clearinghouse, or clearing
12 participant; and

13 (B) the enforceability of clearing rules re-
14 lating to the portability of customer swap posi-
15 tions (and associated margin) upon the insol-
16 vency of a clearing participant;

17 (2) to clarify and harmonize the insolvency law
18 framework applicable to entities that are both com-
19 modity brokers (as defined in section 101(6) of title
20 11, United States Code) and registered brokers or
21 dealers (as defined in section 3(a) of the Securities
22 Exchange Act of 1934 (15 U.S.C. 78c(a))); and

23 (3) to facilitate the portfolio margining of secu-
24 rities and commodity futures and options positions
25 held through entities that are both futures commis-

1 sion merchants (as defined in section 1a of the Com-
2 modity Exchange Act) and registered brokers or
3 dealers (as defined in section 3 of the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78c(a))).

5 **SEC. 3007. ABUSIVE SWAPS.**

6 The Commodity Futures Trading Commission and
7 the Securities and Exchange Commission may, by rule or
8 order, jointly collect information as may be necessary con-
9 cerning the markets for any types of swap (as defined in
10 section 1a(35) of the Commodity Exchange Act) or secu-
11 rity-based swap (as defined in section 1a(38) of such Act)
12 and jointly issue a report with respect to any types of
13 swaps or security-based swaps which the Commodity Fu-
14 tures Trading Commission and the Securities and Ex-
15 change Commission find are detrimental to the stability
16 of a financial market or of participants in a financial mar-
17 ket.

18 **SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN**
19 **SWAP ACTIVITIES.**

20 If the Commodity Futures Trading Commission or
21 the Securities and Exchange Commission determines that
22 the regulation of swaps or security-based swaps markets
23 in a foreign country undermines the stability of the United
24 States financial system, either Commission, in consulta-
25 tion with the Secretary of the Treasury, may prohibit an

1 entity domiciled in that country from participating in the
2 United States in any swap or security-based swap activi-
3 ties.

4 **SEC. 3009. MEMORANDUM.**

5 (a)(1) The Commodity Futures Trading Commission
6 and the Federal Energy Regulatory Commission shall, not
7 later than 180 days after the date of the enactment of
8 this section, negotiate a memorandum of understanding
9 to establish procedures for—

10 (A) applying their respective authorities in a
11 manner so as to ensure effective and efficient regula-
12 tion in the public interest;

13 (B) resolving conflicts concerning overlapping
14 jurisdiction between the two agencies; and

15 (C) avoiding, to the extent possible, conflicting
16 or duplicative regulation.

17 (2) Such memorandum and any subsequent amend-
18 ments to the memorandum shall be promptly submitted
19 to the appropriate committees of Congress.

20 (b) The Commodity Futures Trading Commission
21 and the Federal Energy Regulatory Commission shall, not
22 later than 180 days after the date of the enactment of
23 this section, negotiate a memorandum of understanding
24 to share information that may be requested where either
25 Commission is conducting an investigation into potential

8 SEC. 3101. DEFINITIONS.

12 (1) in paragraph (12)(A)—

(B) in clause (xi), by striking “total assets
in an amount” and inserting “amounts invested
on a discretionary basis”;

20 (A) in subparagraph (D), by striking
21 “and”;

24 (C) by inserting after subparagraph (D)
25 the following:

1 “(E) a swap execution facility registered
2 under section 5h;

3 “(F) a swap repository; and”; and
4 (3) by adding at the end the following:

5 “(35) SWAP.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term ‘swap’ means any
8 agreement, contract, or transaction that—

9 “(i) is a put, call, cap, floor, collar, or
10 similar option of any kind for the purchase
11 or sale of, or based on the value of, 1 or
12 more interest or other rates, currencies,
13 commodities, securities, instruments of in-
14 debtedness, indices, quantitative measures,
15 or other financial or economic interests or
16 property of any kind;

17 “(ii) provides for any purchase, sale,
18 payment, or delivery (other than a dividend
19 on an equity security) that is dependent on
20 the occurrence, non-occurrence, or the ex-
21 tent of the occurrence of an event or con-
22 tingency associated with a potential finan-
23 cial, economic, or commercial consequence;

24 “(iii) provides on an executory basis
25 for the exchange, on a fixed or contingent

1 basis, of 1 or more payments based on the
2 value or level of 1 or more interest or other
3 rates, currencies, commodities, securities,
4 instruments of indebtedness, indices, quan-
5 titative measures, or other financial or eco-
6 nomic interests or property of any kind, or
7 any interest therein or based on the value
8 thereof, and that transfers, as between the
9 parties to the transaction, in whole or in
10 part, the financial risk associated with a
11 future change in any such value or level
12 without also conveying a current or future
13 direct or indirect ownership interest in an
14 asset (including any enterprise or invest-
15 ment pool) or liability that incorporates the
16 financial risk so transferred, and includes
17 any agreement, contract, or transaction
18 commonly known as an interest rate swap,
19 a rate floor, rate cap, rate collar, cross-cur-
20 rency rate swap, basis swap, currency
21 swap, total return swap, equity index swap,
22 equity swap, debt index swap, debt swap,
23 credit spread, credit default swap, credit
24 swap, weather swap, energy swap, metal

1 swap, agricultural swap, emissions swap,
2 or commodity swap;

3 “(iv) is, or in the future becomes,
4 commonly known to the trade as a swap;

5 “(v) meets the definition of ‘swap
6 agreement’ as defined in section 206A of
7 the Gramm-Leach-Bliley Act of which a
8 material term of which is based on the
9 price, yield, value, or volatility of any secu-
10 rity or any group or index of securities, or
11 any interest therein; or

12 “(vi) is any combination or permuta-
13 tion of, or option on, any agreement, con-
14 tract, or transaction described in any of
15 clauses (i) through (v).

16 “(B) EXCLUSIONS.—The term ‘swap’ does
17 not include—

18 “(i) any contract of sale of a com-
19 modity for future delivery (or any option
20 on such a contract) or security futures
21 product traded on or subject to the rules
22 of any board of trade designated as a con-
23 tract market under section 5 or 5f;

24 “(ii) any sale of a nonfinancial com-
25 modity or security for deferred shipment or

1 delivery, so long as the transaction is in-
2 tended to be physically settled;

3 “(iii) any put, call, straddle, option, or
4 privilege on any security, certificate of de-
5 posit, or group or index of securities, in-
6 cluding any interest therein or based on
7 the value thereof, that is subject to the Se-
8 curities Act of 1933 (15 U.S.C. 77a et
9 seq.) and the Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.);

11 “(iv) any put, call, straddle, option, or
12 privilege relating to foreign currency en-
13 tered into on a national securities exchange
14 registered pursuant to section 6(a) of the
15 Securities Exchange Act of 1934 (15
16 U.S.C. 78f(a));

17 “(v) any agreement, contract, or
18 transaction providing for the purchase or
19 sale of 1 or more securities on a fixed basis
20 that is subject to the Securities Act of
21 1933 (15 U.S.C. 77a et seq.) and the Se-
22 curities Exchange Act of 1934 (15 U.S.C.
23 78a et seq.);

24 “(vi) any agreement, contract, or
25 transaction providing for the purchase or

1 sale of 1 or more securities on a contingent
2 basis that is subject to the Securities Act
3 of 1933 (15 U.S.C. 77a et seq.) and the
4 Securities Exchange Act of 1934 (15
5 U.S.C. 78a et seq.), unless the agreement,
6 contract, or transaction predicates the pur-
7 chase or sale on the occurrence of a bona
8 fide contingency that might reasonably be
9 expected to affect or be affected by the
10 creditworthiness of a party other than a
11 party to the agreement, contract, or trans-
12 action;

13 “(vii) any note, bond, or evidence of
14 indebtedness that is a security as defined
15 in section 2(a)(1) of the Securities Act of
16 1933 (15 U.S.C. 77b(a)(1));

17 “(viii) any agreement, contract, or
18 transaction that is—

19 “(I) based on a security; and

20 “(II) entered into directly or
21 through an underwriter (as defined in
22 section 2(a)(11) of the Securities Act
23 of 1933) (15 U.S.C. 77b(a)(11)) by
24 the issuer of the security for the pur-
25 poses of raising capital, unless the

1 agreement, contract, or transaction is
2 entered into to manage a risk associ-
3 ated with capital-raising;
4 “(ix) any foreign exchange forward;
5 “(x) any foreign exchange swap;
6 “(xi) any agreement, contract, or
7 transaction a counterparty of which is a
8 Federal Reserve bank, the United States
9 government or an agency of the United
10 States government that is expressly backed
11 by the full faith and credit of the United
12 States; and
13 “(xii) any security-based swap.

14 “(C) RULE OF CONSTRUCTION REGARDING
15 MASTER AGREEMENTS.—The term ‘swap’ shall
16 be construed to include a master agreement
17 that provides for an agreement, contract, or
18 transaction that is a swap pursuant to subpara-
19 graph (A), together with all supplements to any
20 such master agreement, without regard to
21 whether the master agreement contains an
22 agreement, contract, or transaction that is not
23 a swap pursuant to subparagraph (A), except
24 that the master agreement shall be considered
25 to be a swap only with respect to each agree-

1 ment, contract, or transaction under the master
2 agreement that is a swap pursuant to subpara-
3 graph (A).

4 “(D) FOREIGN EXCHANGE SWAPS AND
5 FORWARDS EXCEPTION.—

6 “(i) IN GENERAL.—Notwithstanding
7 clauses (ix) and (x) of subparagraph (B),
8 foreign exchange swaps and foreign ex-
9 change forwards shall be considered swaps
10 under this paragraph if the Commission
11 makes a determination that either foreign
12 exchange swaps or foreign exchange for-
13 wards or both should be regulated as
14 swaps under this Act and the Secretary
15 concurs with such determination.

16 “(ii) SCOPE OF AUTHORITY.—

17 “(I) The Commission and the
18 Secretary shall jointly determine
19 which of the authorities under this
20 Act regarding swaps the Commission
21 shall exercise over foreign exchange
22 swaps and foreign exchange forwards.
23 Such authorities shall subsequently be
24 exercised solely by the Commission.
25 The Commission and the Secretary

1 may jointly amend any previously
2 made determination under this sub-
3 clause.

4 “(II) Notwithstanding clause (i),
5 the Commission and the Secretary of
6 the Treasury may determine that ei-
7 ther foreign exchange swaps or for-
8 eign exchange forwards or both should
9 not be regulated as swaps under this
10 Act if such determination is jointly
11 made.

12 “(iii) REPORTING.—Notwithstanding
13 clauses (ix) and (x) of subparagraph (B)
14 and subparagraph (D)(ii), all foreign ex-
15 change swaps and foreign exchange for-
16 wards shall be reported to either a swap
17 repository, or, if there is no swap reposi-
18 tory that would accept such swaps or for-
19 wards, to the Commission pursuant to sec-
20 tion 4r within such time period as the
21 Commission may by rule or regulation pre-
22 scribe.

23 “(iv) SECRETARY.—For purposes of
24 this subparagraph only, the term ‘Sec-

1 retary’ means the Secretary of the Treas-
2 ury.

3 “(36) BOARD.—The term ‘Board’ means the
4 Board of Governors of the Federal Reserve System.

5 “(37) SECURITY-BASED SWAP.—The term ‘se-
6 curity-based swap’ has the same meaning as in sec-
7 tion 3(a)(68) of the Securities and Exchange Act of
8 1934.

9 “(38) SWAP DEALER.—

10 “(A) IN GENERAL.—The term ‘swap deal-
11 er’ means any person who—

12 “(i) holds itself out as a dealer in
13 swaps;

14 “(ii) makes a market in swaps;

15 “(iii) regularly engages in the pur-
16 chase of swaps and their resale to cus-
17 tomers in the ordinary course of a busi-
18 ness; or

19 “(iv) engages in any activity causing
20 the person to be commonly known in the
21 trade as a dealer or market maker in
22 swaps.

23 “(B) A person may be designated a swap
24 dealer for a single type or single class or cat-

1 egory of swap and considered not a swap dealer
2 for other types, classes, or categories of swaps.

3 “(C) DE MINIMUS EXCEPTION.—The Com-
4 mission shall make a determination to exempt
5 from designation as a swap dealer an entity
6 that engages in a de minimus amount of swap
7 dealing in connection with transactions with or
8 on the behalf of its customers.

9 “(39) MAJOR SWAP PARTICIPANT.—

10 “(A) IN GENERAL.—The term ‘major swap
11 participant’ means any person who is not a
12 swap dealer, and—

13 “(i) maintains a substantial net posi-
14 tion in outstanding swaps, excluding posi-
15 tions held primarily for hedging, reducing
16 or otherwise mitigating its commercial
17 risk, including operating and balance sheet
18 risk; or

19 “(ii) whose outstanding swaps create
20 substantial net counterparty exposure
21 among the aggregate of its counterparties
22 that could expose those counterparties to
23 significant credit losses.

24 “(B) DEFINITION OF SUBSTANTIAL NET
25 POSITION.—The Commission shall define by

1 rule or regulation the terms ‘substantial net po-
2 sition’, ‘substantial net counterparty exposure’,
3 and ‘significant credit losses’ at thresholds that
4 the Commission determines prudent for the ef-
5 fective monitoring, management and oversight
6 of entities which are systemically important or
7 can significantly impact the financial system
8 through counterparty credit risk. In setting the
9 definitions, the Commission shall consider the
10 person’s relative position in uncleared as op-
11 posed to cleared swaps.

12 “(C) A person may be designated a major
13 swap participant for 1 or more individual types
14 of swaps without being classified as a major
15 swap participant for all classes of swaps.

16 “(40) MAJOR SECURITY-BASED SWAP PARTICI-
17 PANT.—The term ‘major security-based swap partic-
18 ipant’ has the same meaning as in section 3(a)(67)
19 of the Securities Exchange Act of 1934.

20 “(41) APPROPRIATE FEDERAL BANKING AGEN-
21 CY.—The term ‘appropriate Federal banking agency’
22 has the same meaning as in section 3(q) of the Fed-
23 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

24 “(42) PRUDENTIAL REGULATOR.—The term
25 ‘Prudential Regulator’ means—

1 “(A) the Board in the case of a swap deal-
2 er, major swap participant, security-based swap
3 dealer, or major security-based swap participant
4 that is—

5 “(i) a State-chartered bank that is a
6 member of the Federal Reserve System; or

7 “(ii) a State-chartered branch or
8 agency of a foreign bank;

9 “(B) the Office of the Comptroller of the
10 Currency in the case of a swap dealer, major
11 swap participant, security-based swap dealer, or
12 major security-based swap participant that is—

13 “(i) a national bank; or

14 “(ii) a federally chartered branch or
15 agency of a foreign bank; and

16 “(C) the Federal Deposit Insurance Cor-
17 poration in the case of a swap dealer, major
18 swap participant, security-based swap dealer, or
19 major security-based swap participant that is a
20 State-chartered bank that is not a member of
21 the Federal Reserve System.

22 “(43) SECURITY-BASED SWAP DEALER.—The
23 term ‘security-based swap dealer’ has the same
24 meaning as in section 3(a)(71) of the Securities Ex-
25 change Act of 1934.

1 “(44) FOREIGN EXCHANGE FORWARD.—The
2 term ‘foreign exchange forward’ means a transaction
3 that solely involves the exchange of 2 different cur-
4 rencies on a specific future date at a fixed rate
5 agreed at the inception of the contract.

6 “(45) FOREIGN EXCHANGE SWAP.—The term
7 ‘foreign exchange swap’ means a transaction that
8 solely involves the exchange of 2 different currencies
9 on a specific date at a fixed rate agreed at the incep-
10 tion of the contract, and a reverse exchange of the
11 same 2 currencies at a date further in the future
12 and at a fixed rate agreed at the inception of the
13 contract.

14 “(46) PERSON ASSOCIATED WITH A SECURITY-
15 BASED SWAP DEALER OR MAJOR SECURITY-BASED
16 SWAP PARTICIPANT.—The term ‘person associated
17 with a security-based swap dealer or major security-
18 based swap participant’ or ‘associated person of a
19 security-based swap dealer or major security-based
20 swap participant’ has the same meaning as in sec-
21 tion 3(a)(70) of the Securities Exchange Act of
22 1934.

23 “(47) PERSON ASSOCIATED WITH A SWAP
24 DEALER OR MAJOR SWAP PARTICIPANT.—The term
25 ‘person associated with a swap dealer or major swap

1 participant’ or ‘associated person of a swap dealer or
2 major swap participant’ means any partner, officer,
3 director, or branch manager of a swap dealer or
4 major swap participant (or any person occupying a
5 similar status or performing similar functions), any
6 person directly or indirectly controlling, controlled
7 by, or under common control with a swap dealer or
8 major swap participant, or any employee of a swap
9 dealer or major swap participant, except that any
10 person associated with a swap dealer or major swap
11 participant whose functions are solely clerical or
12 ministerial shall not be included in the meaning of
13 the term other than for purposes of section 4s(b)(6).

14 “(48) SWAP REPOSITORY.—The term ‘swap re-
15 pository’ means any person that collects, calculates,
16 prepares or maintains information or records with
17 respect to transactions or positions in or the terms
18 and conditions of swaps entered into by third par-
19 ties.

20 “(49) SWAP EXECUTION FACILITY.—The term
21 ‘swap execution facility’ means a person or entity
22 that facilitates the execution or trading of swaps be-
23 tween two persons through any means of interstate
24 commerce, but which is not a designated contract

1 market, including any electronic trade execution or
2 voice brokerage facility.

3 “(50) DERIVATIVE.—The term ‘derivative’
4 means—

5 “(A) a contract of sale of a commodity for
6 future delivery; or

7 “(B) a swap.”.

8 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
9 Commodity Futures Trading Commission shall adopt a
10 rule further defining the terms “swap”, “swap dealer”,
11 “major swap participant”, and “eligible contract partici-
12 pant” for the purpose of including transactions and enti-
13 ties that have been structured to evade this title.

14 (c) EXEMPTIONS.—Section 4(c) of the Commodity
15 Exchange Act (7 U.S.C. 4(c)) is amended by adding at
16 the end the following: “The Commission shall not have
17 the authority to grant exemptions from the provisions of
18 sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109,
19 3110, 3113, 3115, 3120, and 3121 of the Derivative Mar-
20 kets Transparency and Accountability Act of 2009, except
21 as expressly authorized under the provisions of that Act.
22 Notwithstanding the preceding sentence, the Commodity
23 Futures Trading Commission may exempt from any provi-
24 sion of the Commodity Exchange Act, pursuant to this
25 subsection, an agreement, contract, or transaction that is

1 entered into pursuant to a tariff approved by the Federal
2 Energy Regulatory Commission, if the Commodity Fu-
3 tures Trading Commission determines that the exemption
4 would be consistent with the public interest, and shall con-
5 sider and not unreasonably deny any request made by the
6 Federal Energy Regulatory Commission for such an ex-
7 emption.”.

8 **SEC. 3102. JURISDICTION.**

9 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1) of
10 the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is
11 amended—

12 (1) in the 1st sentence of subparagraph (A)—

13 (A) by striking “(c) through (i)” and in-
14 serting “(c) and (f)”;

15 (B) by inserting “swaps, or” before “con-
16 tracts of sale”;

17 (C) by striking “derivatives transaction
18 execution facility” and inserting “swap execu-
19 tion facility”; and

20 (D) by striking “5a” and inserting “5h”;
21 and

22 (2) by adding at the end the following:

23 “(G)(i) Nothing in this paragraph shall
24 limit the jurisdiction conferred on the Securities
25 and Exchange Commission by the Derivative

1 Markets Transparency and Accountability Act
2 of 2009 with regard to security-based swap
3 agreements as defined pursuant to section
4 3002(e) of such Act, and security-based swaps.

5 “(ii) In addition to the authority of the Se-
6 curities Exchange Commission described in
7 clause (i), nothing in this subparagraph shall
8 limit or affect any statutory authority of the
9 Commission with respect to an agreement, con-
10 tract, or transaction described in clause (i).

11 “(H)(i) Nothing in this Act shall limit or
12 affect any statutory authority of the Federal
13 Energy Regulatory Commission with respect to
14 an agreement, contract, or transaction that is—

15 “(I) not executed, traded, or cleared
16 on a registered entity or trading facility;
17 and

18 “(II) entered into pursuant to a tariff
19 or rate schedule approved by the Federal
20 Energy Regulatory Commission.

21 “(ii) In addition to the authority of the
22 Federal Energy Regulatory Commission de-
23 scribed in clause (i), nothing in this subpara-
24 graph shall limit or affect any statutory author-
25 ity of the Commission with respect to an agree-

1 ment, contract, or transaction described in
2 clause (i).”.

3 (b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7
4 U.S.C. 2(c)(2)(A)) is amended—

5 (1) in clause (i) by striking “or” at the end;

6 (2) by redesignating clause (ii) as clause (iii);

7 and

8 (3) by inserting after clause (i) the following:

9 “(ii) a swap; or”.

10 (c) Section 12(e) of such Act (7 U.S.C. 16(e)) is
11 amended—

12 (1) in paragraph (1)(B), by inserting “or (3)”
13 after “paragraph (2)”;

14 (2) in paragraph (2), by striking subparagraphs
15 (A) and (B) and inserting the following:

16 “(A) a swap; and

17 “(B) an agreement, contract, or trans-
18 action that is excluded from this Act under sec-
19 tion 2(c) or 2(f) of this Act or title IV of the
20 Commodity Futures Modernization Act of 2000
21 or exempted under section 4(c) of this Act (re-
22 gardless of whether any such agreement, con-
23 tract, or transaction is otherwise subject to this
24 Act).”; and

25 (3) by adding at the end the following:

1 “(3) A swap may not be regulated as an insur-
2 ance contract under State law.

3 “(4) The provisions of this Act relating to
4 swaps that were enacted by the Derivative Markets
5 Transparency and Accountability Act of 2009, in-
6 cluding any rule or regulation thereunder, shall not
7 apply to activities outside the United States unless
8 those activities—

9 “(A) have a direct and significant connec-
10 tion with activities in or effect on United States
11 commerce; or

12 “(B) contravene such rules or regulations
13 as the Commission may prescribe as necessary
14 or appropriate to prevent the evasion of any
15 provision of this Act that was enacted by the
16 Derivative Markets Transparency and Account-
17 ability Act of 2009.”.

18 (d) Nothing in the Derivative Markets Transparency
19 and Accountability Act of 2009 or the amendments to the
20 Commodity Exchange Act made by such Act shall limit
21 or affect any statutory enforcement authority of the Fed-
22 eral Energy Regulatory Commission pursuant to Section
23 222 of the Federal Power Act and Section 4A of the Nat-
24 ural Gas Act that existed prior to the date of enactment

1 of the Derivative Markets Transparency and Account-
2 ability Act of 2009.

3 **SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.**

4 (a) CLEARING AND EXECUTION TRANSPARENCY RE-
5 QUIREMENTS.—

6 (1) Section 2 of the Commodity Exchange Act
7 (7 U.S.C. 2) is amended by striking subsections (d),
8 (e), (g), and (h).

9 (2)(A) Prior to the final effective dates in this
10 title, a person may petition the Commodity Futures
11 Trading Commission to remain subject to para-
12 graphs (3) through (7) of section 2(h) of the Com-
13modity Exchange Act.

14 (B) The Commodity Futures Trading Commis-
15 sion shall consider any petition submitted under sub-
16 paragraph (A) in a prompt manner and may allow
17 a person to continue operating subject to paragraphs
18 (3) through (7) of section 2(h) of the Commodity
19 Exchange Act for up to one year after the effective
20 date of this subtitle.

21 (3) Section 2 of such Act (7 U.S.C. 2) is fur-
22 ther amended by inserting after subsection (c) the
23 following:

24 “(d) SWAPS.—Nothing in this Act (other than sub-
25 sections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j),

1 and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s,
2 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6e, 6d, 8, 8a, 9, 12(e)(2),
3 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-
4 sions of this Act as are applicable by their terms to reg-
5 istered entities and Commission registrants) governs or
6 applies to a swap.

7 “(e) LIMITATION ON PARTICIPATION.—It shall be
8 unlawful for any person, other than an eligible contract
9 participant, to enter into a swap unless the swap is en-
10 tered into on or subject to the rules of a board of trade
11 designated as a contract market under section 5.”.

12 (4) Section 2 of such Act (7 U.S.C. 2) is fur-
13 ther amended by inserting after subsection (i) the
14 following:

15 “(j) CLEARING REQUIREMENT.—

16 “(1) IN GENERAL.—

17 “(A) STANDARD FOR CLEARING.—A swap
18 shall be submitted for clearing if a derivatives
19 clearing organization that is registered under
20 this Act will accept the swap for clearing, and
21 the Commission has determined under para-
22 graph (2)(B)(ii) that the swap is required to be
23 cleared.

1 “(B) OPEN ACCESS.—The rules of a de-
2 derivatives clearing organization described in sub-
3 paragraph (A) shall—

4 “(i) prescribe that all swaps submitted
5 to the derivatives clearing organization
6 with the same terms and conditions are
7 economically equivalent within the deriva-
8 tives clearing organization and may be off-
9 set with each other within the derivatives
10 clearing organization; and

11 “(ii) provide for non-discriminatory
12 clearing of a swap executed bilaterally or
13 on or through the rules of an unaffiliated
14 designated contract market or swap execu-
15 tion facility.

16 “(2) COMMISSION REVIEW.—

17 “(A) COMMISSION-INITIATED REVIEW.—

18 “(i) The Commission shall review each
19 swap, or any group, category, type or class
20 of swaps to make a determination as to
21 whether the swap or group, category, type,
22 or class of swaps should be required to be
23 cleared.

24 “(ii) The Commission shall provide at
25 least a 30-day public comment period re-

1 garding any determination made under
2 clause (i).

3 “(B) SWAP SUBMISSIONS.—

4 “(i) A derivatives clearing organiza-
5 tion shall submit to the Commission each
6 swap, or any group, category, type or class
7 of swaps that it plans to accept for clear-
8 ing, and provide notice to its members (in
9 a manner to be determined by the Com-
10 mission) of the submission.

11 “(ii) The Commission shall—

12 “(I) make available to the public
13 any submission received under clause
14 (i);

15 “(II) review each submission
16 made under clause (i), and determine
17 whether the swap, or group, category,
18 type, or class of swaps described in
19 the submission is required to be
20 cleared; and

21 “(III) provide at least a 30-day
22 public comment period regarding its
23 determination as to whether the clear-
24 ing requirement under paragraph
25 (1)(A) shall apply to the submission.

1 “(C) DEADLINE.—The Commission shall
2 make its determination under subparagraph
3 (B)(ii) not later than 90 days after receiving a
4 submission made under subparagraph (B)(i),
5 unless the submitting derivatives clearing orga-
6 nization agrees to an extension for the time lim-
7 itation established under this subparagraph.

8 “(D) DETERMINATION.—

9 “(i) In reviewing a submission made
10 under subparagraph (B), the Commission
11 shall review whether the submission is con-
12 sistent with section 5b(c)(2).

13 “(ii) In reviewing a swap, group of
14 swaps, or class of swaps pursuant to sub-
15 paragraph (A) or a submission made under
16 subparagraph (B), the Commission shall
17 take into account the following factors:

18 “(I) The existence of significant
19 outstanding notional exposures, trad-
20 ing liquidity and adequate pricing
21 data.

22 “(II) The availability of rule
23 framework, capacity, operational ex-
24 pertise and resources, and credit sup-
25 port infrastructure to clear the con-

1 tract on terms that are consistent
2 with the material terms and trading
3 conventions on which the contract is
4 then traded.

5 “(III) The effect on the mitiga-
6 tion of systemic risk, taking into ac-
7 count the size of the market for such
8 contract and the resources of the de-
9 rivatives clearing organization avail-
10 able to clear the contract.

11 “(IV) The effect on competition,
12 including appropriate fees and charges
13 applied to clearing.

14 “(V) The existence of reasonable
15 legal certainty in the event of the in-
16 solvency of the relevant derivatives
17 clearing organization or 1 or more of
18 its clearing members with regard to
19 the treatment of customer and swap
20 counterparty positions, funds, and
21 property.

22 “(iii) In making a determination
23 under subparagraph (B)(ii) that the clear-
24 ing requirement shall apply, the Commis-
25 sion may require such terms and condi-

1 tions to the requirement as the Commis-
2 sion determines to be appropriate.

3 “(E) RULES.—Not later than 1 year after
4 the date of the enactment of the Derivative
5 Markets Transparency and Accountability Act
6 of 2009, the Commission shall adopt rules for
7 a derivatives clearing organization’s submission
8 for review, pursuant to this paragraph, of a
9 swap, or a group, category, type or class of
10 swaps, that it seeks to accept for clearing.

11 “(3) STAY OF CLEARING REQUIREMENT.—

12 “(A) After a determination pursuant to
13 paragraph (2)(B), the Commission, on applica-
14 tion of a counterparty to a swap or on its own
15 initiative, may stay the clearing requirement of
16 paragraph (1) until the Commission completes
17 a review of the terms of the swap (or the group,
18 category, type or class of swaps) and the clear-
19 ing arrangement.

20 “(B) DEADLINE.—The Commission shall
21 complete a review undertaken pursuant to sub-
22 paragraph (A) not later than 90 days after
23 issuance of the stay, unless the derivatives
24 clearing organization that clears the swap, or
25 group, category, type or class of swaps, agrees

1 to an extension of the time limitation estab-
2 lished under this subparagraph.

3 “(C) DETERMINATION.—Upon completion
4 of the review undertaken pursuant to subpara-
5 graph (A), the Commission may—

6 “(i) determine, unconditionally or sub-
7 ject to such terms and conditions as the
8 Commission determines to be appropriate,
9 that the swap, or group, category, type or
10 class of swaps, must be cleared pursuant
11 to this subsection if it finds that such
12 clearing is consistent with paragraph
13 (2)(D); or

14 “(ii) determine that the clearing re-
15 quirement of paragraph (1) shall not apply
16 to the swap, or group, category, type or
17 class of swaps.

18 “(D) RULES.—Not later than 1 year after
19 the date of the enactment of the Derivative
20 Markets Transparency and Accountability Act
21 of 2009, the Commission shall adopt rules for
22 reviewing, pursuant to this paragraph, a deriva-
23 tives clearing organization’s clearing of a swap,
24 or a group, category, type or class of swaps,
25 that it has accepted for clearing.

1 “(4) PREVENTION OF EVASION.—The Commis-
2 sion may prescribe rules under this subsection, or
3 issue interpretations of the rules, as necessary to
4 prevent evasions of this subsection.

5 “(5) REQUIRED REPORTING.—

6 “(A) IN GENERAL.—All swaps that are not
7 accepted for clearing by any derivatives clearing
8 organization shall be reported either to a swap
9 repository described in section 21 or, if there is
10 no repository that would accept the swap, to the
11 Commission pursuant to section 4r within such
12 time period as the Commission may by rule or
13 regulation prescribe. Counterparties to a swap
14 may agree which counterparty will report the
15 swap as required by this paragraph.

16 “(B) SWAP DEALER DESIGNATION.—With
17 regard to swaps where only 1 counterparty is a
18 swap dealer, the swap dealer shall report the
19 swap as required by this paragraph.

20 “(6) REPORTING TRANSITION RULES.—Rules
21 adopted by the Commission under this section shall
22 provide for the reporting of data, as follows:

23 “(A) Swaps entered into before the date of
24 the enactment of this subsection shall be re-
25 ported to a registered swap repository or the

1 Commission no later than 180 days after the
2 effective date of this subsection; and

3 “(B) Swaps entered into on or after such
4 date of enactment shall be reported to a reg-
5 istered swap repository or the Commission no
6 later than the later of—

7 “(i) 90 days after such effective date;

8 or

9 “(ii) such other time after entering
10 into the swap as the Commission may pre-
11 scribe by rule or regulation.

12 “(7) CLEARING TRANSITION RULES.—

13 “(A) Swaps entered into before the date of
14 the enactment of this subsection are exempt
15 from the clearing requirements of this sub-
16 section if reported pursuant to paragraph
17 (6)(A).

18 “(B) Swaps entered into before application
19 of the clearing requirement pursuant to this
20 subsection are exempt from the clearing re-
21 quirements of this subsection if reported pursu-
22 ant to paragraph (6)(B).

23 “(8) EXCEPTIONS.—

1 “(A) IN GENERAL.—The requirements of
2 paragraph (1) shall not apply to a swap if one
3 of the counterparties to the swap—

4 “(i) is not a swap dealer or major
5 swap participant;

6 “(ii) is using swaps to hedge or miti-
7 gate commercial risk, including operating
8 or balance sheet risk; and

9 “(iii) notifies the Commission, in a
10 manner set forth by the Commission, how
11 it generally meets its financial obligations
12 associated with entering into non-cleared
13 swaps.

14 “(B) ABUSE OF EXCEPTION.—The Com-
15 mission may prescribe rules under this sub-
16 section, or issue interpretations of the rules, as
17 necessary to prevent abuse of the exemption in
18 subparagraph (A) by swap dealers and major
19 swap participants.

20 “(C) OPTION TO CLEAR.—The application
21 of the clearing exception in subparagraph (A) is
22 solely at the discretion of the counterparty to
23 the swap that meets the conditions of clauses
24 (i) through (iii) of subparagraph (A).

25 “(k) EXECUTION TRANSPARENCY.—

1 “(1) REQUIREMENT.—A swap that is subject to
2 the clearing requirement of subsection (j) shall not
3 be traded except on or through a board of trade des-
4 ignated as a contract market under section 5, or on
5 or through a swap execution facility registered under
6 section 5h, that makes the swap available for trad-
7 ing.

8 “(2) EXCEPTIONS.—The requirement of para-
9 graph (1) shall not apply to a swap if no designated
10 contract market or swap execution facility makes the
11 swap available for trading.

12 “(3) AGRICULTURAL SWAPS.—No person shall
13 offer to enter into, enter into or confirm the execu-
14 tion of, any swap in an agricultural commodity (as
15 defined by the Commission) that is subject to para-
16 graphs (1) and (2) except pursuant to a rule or reg-
17 ulation of the Commission allowing the swap under
18 such terms and conditions as the Commission shall
19 prescribe.

20 “(4) REQUIRED REPORTING.—If the exception
21 of paragraph (2) applies and there is no facility that
22 makes the swap available to trade, the counterpar-
23 ties shall comply with any recordkeeping and trans-
24 action reporting requirements that may be pre-

scribed by the Commission with respect to swaps
subject to the requirements of paragraph (1).

“(5) EXCHANGE TRADING.—In adopting rules
and regulations, the Commission shall endeavor to
eliminate unnecessary impediments to the trading on
boards of trade designated as contract markets
under section 5 of contracts, agreements, or trans-
actions that would be security-based swaps but for
the trading of such contracts, agreements or trans-
actions on such a designated contract market.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of
such Act (7 U.S.C. 7a–1) are amended to read as
follows:

“(a) REGISTRATION REQUIREMENT.—

“(1) IN GENERAL.—It shall be unlawful for any
entity, unless registered with the Commission, di-
rectly or indirectly to make use of the mails or any
means or instrumentality of interstate commerce to
perform the functions of a derivatives clearing orga-
nization described in section 1a(10) of this Act with
respect to—

“(A) a contract of sale of a commodity for
future delivery (or option on such a contract) or

1 option on a commodity, in each case unless the
2 contract or option is—

3 “(i) excluded from this Act by section
4 2(a)(1)(C)(i), 2(c), or 2(f); or

5 “(ii) a security futures product
6 cleared by a clearing agency registered
7 with the Securities and Exchange Commis-
8 sion under the Securities Exchange Act of
9 1934 (15 U.S.C. 78a et seq.); or

10 “(B) a swap.

11 “(2) EXISTING BANKS AND CLEARING AGEN-
12 CIES.—A bank or a clearing agency registered with
13 the Securities and Exchange Commission under the
14 Securities Exchange Act of 1934 required to be reg-
15 istered as a derivatives clearing organization under
16 this section is deemed to be registered under this
17 section to the extent that the bank cleared swaps, as
18 defined in this Act, as a multilateral clearing organi-
19 zation or the clearing agency cleared swaps, as de-
20 fined in this Act, before the enactment of this sub-
21 section. A bank to which this paragraph applies
22 may, by the vote of the shareholders owning not less
23 than 51 percent of the voting interests of the bank,
24 be converted into a State corporation, partnership,
25 limited liability company, or other similar legal form

1 pursuant to a plan of conversion, if the conversion
2 is not in contravention of applicable State law.

3 “(b) VOLUNTARY REGISTRATION.—A person that
4 clears agreements, contracts, or transactions that are not
5 required to be cleared under this Act may register with
6 the Commission as a derivatives clearing organization.”.

7 (2) Section 5b of such Act (7 U.S.C. 7a–1) is
8 amended by adding at the end the following:

9 “(g) RULES.—Not later than 1 year after the date
10 of the enactment of the Derivative Markets Transparency
11 and Accountability Act of 2009, the Commission shall
12 adopt rules governing persons that are registered as de-
13 rivatives clearing organizations for swaps under this sub-
14 section.

15 “(h) EXEMPTIONS.—

16 “(1) IN GENERAL.—The Commission may ex-
17 empt, conditionally or unconditionally, a derivatives
18 clearing organization from registration under this
19 section for the clearing of swaps if the Commission
20 finds that the derivatives clearing organization is
21 subject to comparable, comprehensive supervision
22 and regulation on a consolidated basis by a Pruden-
23 tial Regulator or the appropriate governmental au-
24 thorities in the organization’s home country.

1 “(2) A person that is required to be registered
2 as a derivatives clearing organization under this sec-
3 tion, whose principal business is clearing securities
4 and options on securities and which is a clearing
5 agency registered with the Securities Exchange
6 Commission under the Securities Exchange Act of
7 1934 (15 U.S.C. 78a et seq.), shall be uncondition-
8 ally exempt from registration under this section sole-
9 ly for the purpose of clearing swaps, unless the Com-
10 mission finds that the clearing agency is not subject
11 to comparable, comprehensive supervision and regu-
12 lation by the Securities and Exchange Commission.

13 “(i) DESIGNATION OF COMPLIANCE OFFICER.—

14 “(1) IN GENERAL.—Each derivatives clearing
15 organization shall designate an individual to serve as
16 a compliance officer.

17 “(2) DUTIES.—The compliance officer—

18 “(A) shall report directly to the board or
19 to the senior officer of the derivatives clearing
20 organization; and

21 “(B) shall—

22 “(i) review compliance with the core
23 principles in section 5b(c)(2).

24 “(ii) in consultation with the board of
25 the derivatives clearing organization, a

1 body performing a function similar to that
2 of a board, or the senior officer of the de-
3 rivatives clearing organization, resolve any
4 conflicts of interest that may arise;

5 “(iii) be responsible for administering
6 the policies and procedures required to be
7 established pursuant to this section; and

8 “(iv) ensure compliance with this Act
9 and the rules and regulations issued under
10 this Act; and

11 “(C) shall establish procedures for remedi-
12 ation of non-compliance issues found during
13 compliance office reviews, lookbacks, internal or
14 external audit findings, self-reported errors, or
15 through validated complaints. The procedures
16 shall establish the handling, management re-
17 sponse, remediation, re-testing, and closing of
18 non-compliant issues.

19 “(3) ANNUAL REPORTS REQUIRED.—The com-
20 pliance officer shall annually prepare and sign a re-
21 port on the compliance of the derivatives clearing or-
22 ganization with this Act and the policies and proce-
23 dures of the derivatives clearing organization, includ-
24 ing the code of ethics and conflict of interest policies
25 of the derivatives clearing organization, in accord-

1 ance with rules prescribed by the Commission. The
2 compliance report shall accompany the financial re-
3 ports of the derivatives clearing organization that
4 are required to be furnished to the Commission pur-
5 suant to this section and shall include a certification
6 that, under penalty of law, the report is accurate
7 and complete.”.

8 (3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-
9 1(c)(2)) is amended to read as follows:

10 “(2) CORE PRINCIPLES FOR DERIVATIVES
11 CLEARING ORGANIZATIONS.—

12 “(A) IN GENERAL.—To be registered and
13 to maintain registration as a derivatives clear-
14 ing organization, a derivatives clearing organi-
15 zation shall comply with the core principles
16 specified in this paragraph and any requirement
17 that the Commission may impose by rule or
18 regulation pursuant to section 8a(5). Except
19 where the Commission determines otherwise by
20 rule or regulation, a derivatives clearing organi-
21 zation shall have reasonable discretion in estab-
22 lishing the manner in which the organization
23 complies with the core principles.

24 “(B) FINANCIAL RESOURCES.—

1 “(i) The derivatives clearing organiza-
2 tion shall have adequate financial, oper-
3 ational, and managerial resources to dis-
4 charge the responsibilities of the organiza-
5 tion.

6 “(ii) The financial resources of the de-
7 rivatives clearing organization shall at a
8 minimum exceed the total amount that
9 would—

10 “(I) enable the organization to
11 meet the financial obligations of the
12 organization to the members of, and
13 participants in, the organization, not-
14 withstanding a default by the member
15 or participant creating the largest fi-
16 nancial exposure for the organization
17 in extreme but plausible market condi-
18 tions; and

19 “(II) enable the organization to
20 cover the operating costs of the orga-
21 nization for a period of 1 year, cal-
22 culated on a rolling basis.

23 “(C) PARTICIPANT AND PRODUCT ELIGI-
24 BILITY.—

1 “(i) The derivatives clearing organiza-
2 tion shall establish—

3 “(I) appropriate admission and
4 continuing eligibility standards (in-
5 cluding sufficient financial resources
6 and operational capacity to meet obli-
7 gations arising from participation in
8 the organization) for members of and
9 participants in the organization; and

10 “(II) appropriate standards for
11 determining eligibility of agreements,
12 contracts, or transactions submitted
13 to the organization for clearing.

14 “(ii) The derivatives clearing organi-
15 zation shall have procedures in place to
16 verify that participation and membership
17 requirements are met on an ongoing basis.

18 “(iii) The participation and member-
19 ship requirements of the derivatives clear-
20 ing organization shall be objective, publicly
21 disclosed, and permit fair and open access.

22 “(D) RISK MANAGEMENT.—

23 “(i) The derivatives clearing organiza-
24 tion shall have the ability to manage the
25 risks associated with discharging the re-

1 sponsibilities of a derivatives clearing orga-
2 nization through the use of appropriate
3 tools and procedures.

4 “(ii) The derivatives clearing organi-
5 zation shall measure the credit exposures
6 of the organization to the members of, and
7 participants in, the organization at least
8 once each business day and shall monitor
9 the exposures throughout the business day.

10 “(iii) Through margin requirements
11 and other risk control mechanisms, a de-
12 rivatives clearing organization shall limit
13 the exposures of the organization to poten-
14 tial losses from defaults by the members
15 of, and participants in, the organization so
16 that the operations of the organization
17 would not be disrupted and non-defaulting
18 members or participants would not be ex-
19 posed to losses that they cannot anticipate
20 or control.

21 “(iv) Margin required from all mem-
22 bers and participants shall be sufficient to
23 cover potential exposures in normal market
24 conditions.

1 “(v) The models and parameters used
2 in setting margin requirements shall be
3 risk-based and reviewed regularly.

4 “(E) SETTLEMENT PROCEDURES.—The
5 derivatives clearing organization shall—

6 “(i) complete money settlements on a
7 timely basis, and not less than once each
8 business day;

9 “(ii) employ money settlement ar-
10 rangements that eliminate or strictly limit
11 the exposure of the organization to settle-
12 ment bank risks, such as credit and liquid-
13 ity risks from the use of banks to effect
14 money settlements;

15 “(iii) ensure money settlements are
16 final when effected;

17 “(iv) maintain an accurate record of
18 the flow of funds associated with each
19 money settlement;

20 “(v) have the ability to comply with
21 the terms and conditions of any permitted
22 netting or offset arrangements with other
23 clearing organizations; and

24 “(vi) for physical settlements, estab-
25 lish rules that clearly state the obligations

1 of the organization with respect to physical
2 deliveries, including how risks from these
3 obligations shall be identified and man-
4 aged.

5 “(F) TREATMENT OF FUNDS.—

6 “(i) The derivatives clearing organiza-
7 tion shall have standards and procedures
8 designed to protect and ensure the safety
9 of member and participant funds and as-
10 sets.

11 “(ii) The derivatives clearing organi-
12 zation shall hold member and participant
13 funds and assets in a manner whereby risk
14 of loss or of delay in the access of the or-
15 ganization to the assets and funds is mini-
16 mized.

17 “(iii) Assets and funds invested by the
18 derivatives clearing organization shall be
19 held in instruments with minimal credit,
20 market, and liquidity risks.

21 “(G) DEFAULT RULES AND PROCE-
22 DURES.—

23 “(i) The derivatives clearing organiza-
24 tion shall have rules and procedures de-
25 signed to allow for the efficient, fair, and

1 safe management of events when members
2 or participants become insolvent or other-
3 wise default on their obligations to the or-
4 ganization.

5 “(ii) The default procedures of the de-
6 rivatives clearing organization shall be
7 clearly stated, and they shall ensure that
8 the organization can take timely action to
9 contain losses and liquidity pressures and
10 to continue meeting the obligations of the
11 organization.

12 “(iii) The default procedures shall be
13 publicly available.

14 “(H) RULE ENFORCEMENT.—The deriva-
15 tives clearing organization shall—

16 “(i) maintain adequate arrangements
17 and resources for the effective monitoring
18 and enforcement of compliance with rules
19 of the organization and for resolution of
20 disputes; and

21 “(ii) have the authority and ability to
22 discipline, limit, suspend, or terminate the
23 activities of a member or participant for
24 violations of rules of the organization.

1 “(I) SYSTEM SAFEGUARDS.—The deriva-
2 tives clearing organization shall—

3 “(i) establish and maintain a program
4 of risk analysis and oversight to identify
5 and minimize sources of operational risk
6 through the development of appropriate
7 controls and procedures, and the develop-
8 ment of automated systems, that are reli-
9 able, secure, and have adequate scalable
10 capacity;

11 “(ii) establish and maintain emer-
12 gency procedures, backup facilities, and a
13 plan for disaster recovery that allows for
14 the timely recovery and resumption of op-
15 erations and the fulfillment of the respon-
16 sibilities and obligations of the organiza-
17 tion; and

18 “(iii) periodically conduct tests to
19 verify that backup resources are sufficient
20 to ensure continued order processing and
21 trade matching, price reporting, market
22 surveillance, and maintenance of a com-
23 prehensive and accurate audit trail.

24 “(J) REPORTING.—The derivatives clear-
25 ing organization shall provide to the Commis-

1 sion all information necessary for the Commis-
2 sion to conduct oversight of the organization.

3 “(K) RECORDKEEPING.—The derivatives
4 clearing organization shall maintain records of
5 all activities related to the business of the orga-
6 nization as a derivatives clearing organization
7 in a form and manner acceptable to the Com-
8 mission for a period of 5 years.

9 “(L) PUBLIC INFORMATION.—

10 “(i) The derivatives clearing organiza-
11 tion shall provide market participants with
12 sufficient information to identify and
13 evaluate accurately the risks and costs as-
14 sociated with using the services of the or-
15 ganization.

16 “(ii) The derivatives clearing organi-
17 zation shall make information concerning
18 the rules and operating procedures gov-
19 erning the clearing and settlement systems
20 (including default procedures) of the orga-
21 nization available to market participants.

22 “(iii) The derivatives clearing organi-
23 zation shall disclose publicly and to the
24 Commission information concerning—

1 “(I) the terms and conditions of
2 contracts, agreements, and trans-
3 actions cleared and settled by the or-
4 ganization;

5 “(II) clearing and other fees that
6 the organization charges the members
7 of, and participants in, the organiza-
8 tion;

9 “(III) the margin-setting method-
10 ology and the size and composition of
11 the financial resource package of the
12 organization;

13 “(IV) other information relevant
14 to participation in the settlement and
15 clearing activities of the organization;
16 and

17 “(V) daily settlement prices, vol-
18 ume, and open interest for all con-
19 tracts settled or cleared by the organi-
20 zation.

21 “(M) INFORMATION-SHARING.—The de-
22 rivatives clearing organization shall—

23 “(i) enter into and abide by the terms
24 of all appropriate and applicable domestic

1 and international information-sharing
2 agreements; and

3 “(ii) use relevant information obtained
4 from the agreements in carrying out the
5 risk management program of the organiza-
6 tion.

7 “(N) ANTITRUST CONSIDERATIONS.—The
8 derivatives clearing organization shall avoid—

9 “(i) adopting any rule or taking any
10 action that results in any unreasonable re-
11 straint of trade; or

12 “(ii) imposing any material anti-
13 competitive burden.

14 “(O) GOVERNANCE FITNESS STAND-
15 ARDS.—

16 “(i) The derivatives clearing organiza-
17 tion shall establish governance arrange-
18 ments that are transparent in order to ful-
19 fill public interest requirements and to
20 support the objectives of the owners of,
21 and participants in, the organization.

22 “(ii) The derivatives clearing organi-
23 zation shall establish and enforce appro-
24 priate fitness standards for the directors,
25 members of any disciplinary committee,

1 and members of the organization, and any
2 other persons with direct access to the set-
3 tlement or clearing activities of the organi-
4 zation, including any parties affiliated with
5 any of the persons described in this sub-
6 paragraph.

7 “(P) CONFLICTS OF INTEREST.—The de-
8 rivatives clearing organization shall establish
9 and enforce rules to minimize conflicts of inter-
10 est in the decision-making process of the orga-
11 nization and establish a process for resolving
12 the conflicts of interest.

13 “(Q) COMPOSITION OF THE BOARDS.—The
14 derivatives clearing organization shall ensure
15 that the composition of the governing board or
16 committee includes market participants.

17 “(R) LEGAL RISK.—The derivatives clear-
18 ing organization shall have a well founded,
19 transparent, and enforceable legal framework
20 for each aspect of its activities.”.

21 (4) Section 5b of such Act (7 U.S.C. 7a–1) is
22 further amended by adding after subsection (i), as
23 added by this section, the following:

24 “(j) REPORTING.—

1 “(1) IN GENERAL.—A derivatives clearing orga-
2 nization that clears swaps shall provide to the Com-
3 mission all information determined by the Commis-
4 sion to be necessary to perform the responsibilities
5 of the Commission under this Act. The Commission
6 shall adopt data collection and maintenance require-
7 ments for swaps cleared by derivatives clearing orga-
8 nizations that are comparable to the corresponding
9 requirements for swaps accepted by swap reposi-
10 tories and swaps traded on swap execution facilities.
11 The Commission shall share the information, upon
12 request, with the Board, the Securities and Ex-
13 change Commission, the appropriate Federal bank-
14 ing agencies, the Financial Services Oversight Coun-
15 cil, and the Department of Justice or other persons
16 the Commission deems appropriate, including for-
17 eign financial supervisors (including foreign futures
18 authorities), foreign central banks, and foreign min-
19 istries that comply with the provisions of section 8.

20 “(2) PUBLIC INFORMATION.—A derivatives
21 clearing organization that clears swaps shall provide
22 to the Commission, or its designee, such information
23 as is required by, and in a form and at a frequency
24 to be determined by, the Commission, in order to

1 comply with the public reporting requirements con-
2 tained in section 8(j).

3 “(3) A derivatives clearing organization shall
4 keep any such books and records relating to swaps
5 defined in section 1a(35)(A)(v) open to inspection
6 and examination by the Securities and Exchange
7 Commission.”.

8 (5) Section 8(e) of such Act (7 U.S.C. 12(e))
9 is amended in the last sentence by inserting “central
10 bank and ministries” after “department” each place
11 it appears.

12 (c) **LEGAL CERTAINTY FOR IDENTIFIED BANKING**
13 **PRODUCTS.—**

14 (1) **REPEAL.**—Sections 402(d), 404, 407,
15 408(b), and 408(c)(2) of the Legal Certainty for
16 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
17 27e, 27f(b), and 27f(c)(2)) are repealed.

18 (2) **LEGAL CERTAINTY.**—Section 403 of the
19 Legal Certainty for Bank Products Act of 2000 (7
20 U.S.C. 27a) is amended to read as follows:

21 **“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**

22 “(a) **EXCLUSION.**—Except as provided in subsection
23 (b) or (c)—

24 “(1) the Commodity Exchange Act shall not
25 apply to, and the Commodity Futures Trading Com-

1 mission shall not exercise regulatory authority under
2 such Act with respect to, an identified banking prod-
3 uct; and

4 “(2) the definitions of ‘security-based swap’ in
5 section 3(a)(68) of the Securities Exchange Act of
6 1934 and ‘security-based swap agreement’ in section
7 3(a)(76) of the Securities Exchange Act of 1934 do
8 not include any identified banking product.

9 “(b) EXCEPTION.—An appropriate Federal banking
10 agency may except an identified banking product of a
11 bank under its regulatory jurisdiction from the exclusions
12 in subsection (a) if the agency determines, in consultation
13 with the Commodity Futures Trading Commission and the
14 Securities and Exchange Commission, that the product—

15 “(1) would meet the definition of swap in sec-
16 tion 1a(35) of the Commodity Exchange Act (7
17 U.S.C. 1a(35)) or security-based swap in section
18 3(a)(68) of the Securities and Exchange Act of
19 1934; and

20 “(2) has become known to the trade as a swap
21 or security-based swap, or otherwise has been struc-
22 tured as an identified banking product for the pur-
23 pose of evading the provisions of the Commodity Ex-
24 change Act (7 U.S.C. 1 et seq.), the Securities Act

1 of 1933 (15 U.S.C. 77a et seq.), or the Securities
 2 Exchange Act of 1934 (15 U.S.C. 78a et seq.).

3 “(c) EXCEPTION.—The exclusions in subsection (a)
 4 shall not apply to an identified banking product that—

5 “(1) is a product of a bank that is not under
 6 the regulatory jurisdiction of an appropriate Federal
 7 banking agency;

8 “(2) meets the definition of swap in section
 9 1a(35) of the Commodity Exchange Act or security-
 10 based swap in section 3(a)(68) of the Securities and
 11 Exchange Act of 1934; and

12 “(3) has become known to the trade as a swap
 13 or security-based swap, or otherwise has been struc-
 14 tured as an identified banking product for the pur-
 15 pose of evading the provisions of the Commodity Ex-
 16 change Act (7 U.S.C. 1 et seq.), the Securities Act
 17 of 1933 (15 U.S.C. 77a et seq.), or the Securities
 18 Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

19 **SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP**
 20 **DATA.**

21 Section 8 of the Commodity Exchange Act (7 U.S.C.
 22 12) is amended by adding at the end the following:

23 “(j) PUBLIC REPORTING OF AGGREGATE SWAP
 24 DATA.—

1 “(1) IN GENERAL.—The Commission, or a per-
 2 son designated by the Commission pursuant to para-
 3 graph (2), shall make available to the public, in a
 4 manner that does not disclose the business trans-
 5 actions and market positions of any person, aggre-
 6 gate data on swap trading volumes and positions
 7 from the sources set forth in paragraph (3).

8 “(2) DESIGNEE OF THE COMMISSION.—The
 9 Commission may designate a derivatives clearing or-
 10 ganization or a swap repository to carry out the
 11 public reporting described in paragraph (1).

12 “(3) SOURCES OF INFORMATION.—The sources
 13 of the information to be publicly reported as de-
 14 scribed in paragraph (1) are—

15 “(A) derivatives clearing organizations
 16 pursuant to section 5b(j)(2);

17 “(B) swap repositories pursuant to section
 18 21(c)(3); and

19 “(C) reports received by the Commission
 20 pursuant to section 4r.”.

21 **SEC. 3105. SWAP REPOSITORIES.**

22 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 23 is amended by inserting after section 20 the following:

24 **“SEC. 21. SWAP REPOSITORIES.**

25 “(a) REGISTRATION REQUIREMENT.—

1 “(1) IN GENERAL.—It shall be unlawful for any
2 person, unless registered with the Commission, di-
3 rectly or indirectly to make use of the mails or any
4 means or instrumentality of interstate commerce to
5 perform the functions of a swap repository.

6 “(2) INSPECTION AND EXAMINATION.—Reg-
7 istered swap repositories shall be subject to inspec-
8 tion and examination by any representative of the
9 Commission.

10 “(b) STANDARD SETTING.—

11 “(1) DATA IDENTIFICATION.—The Commission
12 shall prescribe standards that specify the data ele-
13 ments for each swap that shall be collected and
14 maintained by each registered swap repository.

15 “(2) DATA COLLECTION AND MAINTENANCE.—
16 The Commission shall prescribe data collection and
17 data maintenance standards for swap repositories.

18 “(3) COMPARABILITY.—The standards pre-
19 scribed by the Commission under this subsection
20 shall be comparable to the data standards imposed
21 by the Commission on derivatives clearing organiza-
22 tions that clear swaps.

23 “(c) DUTIES.—A swap repository shall—

24 “(1) accept data prescribed by the Commission
25 for each swap under subsection (b);

1 “(2) maintain the data in such form and man-
2 ner and for such period as may be required by the
3 Commission;

4 “(3) provide to the Commission, or its designee,
5 such information as is required by, and in a form
6 and at a frequency to be determined by, the Com-
7 mission, in order to comply with the public reporting
8 requirements contained in section 8(j); and

9 “(4) make available, on a confidential basis
10 pursuant to section 8, all data obtained by the swap
11 repository, including individual counterparty trade
12 and position data, to the Commission, the appro-
13 priate Federal banking agencies, the Financial Serv-
14 ices Oversight Council, the Securities and Exchange
15 Commission, and the Department of Justice or to
16 other persons the Commission deems appropriate,
17 including foreign financial supervisors (including for-
18 eign futures authorities), foreign central banks, and
19 foreign ministries.

20 “(d) RULES.—Not later than 1 year after the date
21 of the enactment of the Derivative Markets Transparency
22 and Accountability Act of 2009, the Commission shall
23 adopt rules governing persons that are registered under
24 this section, including rules that specify the data elements
25 that shall be collected and maintained.

1 “(e) EXEMPTIONS.—The Commission may exempt,
 2 conditionally or unconditionally, a swap repository from
 3 the requirements of this section if the Commission finds
 4 that the swap repository is subject to comparable, com-
 5 prehensive supervision and regulation on a consolidated
 6 basis by the Securities and Exchange Commission, a Pru-
 7 dential Regulator or the appropriate governmental au-
 8 thorities in the organization’s home country.”.

9 **SEC. 3106. REPORTING AND RECORDKEEPING.**

10 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
 11 is amended by inserting after section 4q the following:

12 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
 13 **SWAPS.**

14 “(a) IN GENERAL.—Any person who enters into a
 15 swap and—

16 “(1) did not have the swap cleared in accord-
 17 ance with section 2(j)(1); and

18 “(2) did not have data regarding the swap ac-
 19 cepted by a swap repository in accordance with rules
 20 (including timeframes) adopted by the Commission
 21 under section 21,

22 shall meet the requirements in subsection (b).

23 “(b) REPORTS.—Any person described in subsection
 24 (a) shall—

1 “(1) make such reports in such form and man-
2 ner and for such period as the Commission shall pre-
3 scribe by rule or regulation regarding the swaps held
4 by the person; and

5 “(2) keep books and records pertaining to the
6 swaps held by the person in such form and manner
7 and for such period as may be required by the Com-
8 mission, which books and records shall be open to
9 inspection by any representative of the Commission,
10 an appropriate Federal banking agency, the Securi-
11 ties and Exchange Commission, the Financial Serv-
12 ices Oversight Council, and the Department of Jus-
13 tice.

14 “(c) IDENTICAL DATA.—In adopting rules under this
15 section, the Commission shall require persons described in
16 subsection (a) to report the same or a more comprehensive
17 set of data than the Commission requires swap reposi-
18 tories to collect under section 21.”.

19 **SEC. 3107. REGISTRATION AND REGULATION OF SWAP**
20 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

21 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
22 is amended by inserting after section 4r (as added by sec-
23 tion 3106) the following:

1 **“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
2 **ERS AND MAJOR SWAP PARTICIPANTS.**

3 “(a) REGISTRATION.—

4 “(1) It shall be unlawful for any person to act
5 as a swap dealer unless the person is registered as
6 a swap dealer with the Commission.

7 “(2) It shall be unlawful for any person to act
8 as a major swap participant unless the person is
9 registered as a major swap participant with the
10 Commission.

11 “(b) REQUIREMENTS.—

12 “(1) IN GENERAL.—A person shall register as
13 a swap dealer or major swap participant by filing a
14 registration application with the Commission.

15 “(2) CONTENTS.—The application shall be
16 made in such form and manner as prescribed by the
17 Commission, giving any information and facts as the
18 Commission may deem necessary concerning the
19 business in which the applicant is or will be engaged.
20 The person, when registered as a swap dealer or
21 major swap participant, shall continue to report and
22 furnish to the Commission such information per-
23 taining to the person’s business as the Commission
24 may require.

1 “(3) EXPIRATION.—Each registration shall ex-
2 pire at such time as the Commission may by rule or
3 regulation prescribe.

4 “(4) RULES.—Except as provided in sub-
5 sections (c), (d) and (e), the Commission may pre-
6 scribe rules applicable to swap dealers and major
7 swap participants, including rules that limit the ac-
8 tivities of swap dealers and major swap participants.
9 Except with regard to subsection (d)(1)(A), the
10 Commission may provide conditional or uncondi-
11 tional exemptions from some or all of the rules or
12 requirements prescribed under this section for swap
13 dealers and major swap participants.

14 “(5) TRANSITION.—Rules adopted under this
15 section shall provide for the registration of swap
16 dealers and major swap participants no later than 1
17 year after the effective date of the Derivative Mar-
18 kets Transparency and Accountability Act of 2009.

19 “(6) STATUTORY DISQUALIFICATION.—Except
20 to the extent otherwise specifically provided by rule,
21 regulation, or order, it shall be unlawful for a swap
22 dealer or a major swap participant to permit any
23 person associated with a swap dealer or a major
24 swap participant who is subject to a statutory dis-
25 qualification to effect or be involved in effecting

1 swaps on behalf of the swap dealer or major swap
2 participant, if the swap dealer or major swap partici-
3 pant knew, or in the exercise of reasonable care
4 should have known, of the statutory disqualification.

5 “(c) RULES.—

6 “(1) IN GENERAL.—Not later than 1 year after
7 the date of the enactment of this section, the Com-
8 mission shall adopt rules for persons that are reg-
9 istered as swap dealers or major swap participants
10 under this section.

11 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
12 MENTS.—The Commission shall not prescribe rules
13 imposing prudential requirements on swap dealers or
14 major swap participants for which there is a Pru-
15 dential Regulator. This provision shall not be con-
16 strued as limiting the authority of the Commission
17 to prescribe appropriate business conduct, reporting,
18 and recordkeeping requirements to protect investors.

19 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) BANK SWAP DEALERS AND MAJOR
22 SWAP PARTICIPANTS.—Each registered swap
23 dealer and major swap participant for which
24 there is a Prudential Regulator shall meet such
25 minimum capital requirements and minimum

1 initial and variation margin requirements as the
2 Prudential Regulators shall by rule or regula-
3 tion jointly prescribe that:

4 “(i) help ensure the safety and sound-
5 ness of the swap dealer or major swap par-
6 ticipant; and

7 “(ii) are appropriate for the risk asso-
8 ciated with the non-cleared swaps held as
9 a swap dealer or major swap participant.

10 “(B) NON-BANK SWAP DEALERS AND
11 MAJOR SWAP PARTICIPANTS.—Each registered
12 swap dealer and major swap participant for
13 which there is not a Prudential Regulator shall
14 meet such minimum capital requirements and
15 minimum initial and variation margin require-
16 ments as the Commission shall by rule or regu-
17 lation prescribe that—

18 “(i) help ensure the safety and sound-
19 ness of the swap dealer or major swap par-
20 ticipant; and

21 “(ii) are appropriate for the risk asso-
22 ciated with the non-cleared swaps held as
23 a swap dealer or major swap participant.

24 “(2) RULES.—

1 “(A) BANK SWAP DEALERS AND MAJOR
2 SWAP PARTICIPANTS.—No later than 1 year
3 after the date of the enactment of the Deriva-
4 tive Markets Transparency and Accountability
5 Act of 2009, the Prudential Regulators, in con-
6 sultation with the Commission, shall jointly
7 adopt rules imposing capital and margin re-
8 quirements under this subsection for swap deal-
9 ers and major swap participants, with respect
10 to their activities as a swap dealer or major
11 swap participant for which there is a Prudential
12 Regulator.

13 “(B) NON-BANK SWAP DEALERS AND
14 MAJOR SWAP PARTICIPANTS.—No later than 1
15 year after the date of the enactment of the De-
16 rivative Markets Transparency and Account-
17 ability Act of 2009, the Commission shall adopt
18 rules imposing capital and margin requirements
19 under this subsection for swap dealers and
20 major swap participants for which there is no
21 Prudential Regulator.

22 “(3) AUTHORITY.—Nothing in this section shall
23 limit the authority of the Commission to set capital
24 requirements for a registered futures commission

1 merchant or introducing broker in accordance with
2 section 4f.

3 “(e) REPORTING AND RECORDKEEPING.—

4 “(1) IN GENERAL.—Each registered swap deal-
5 er and major swap participant—

6 “(A) shall make such reports as are pre-
7 scribed by the Commission by rule or regulation
8 regarding the transactions and positions and fi-
9 nancial condition of the person;

10 “(B) for which—

11 “(i) there is a Prudential Regulator,
12 shall keep books and records of all activi-
13 ties related to its business as a swap dealer
14 or major swap participant in such form
15 and manner and for such period as may be
16 prescribed by the Commission by rule or
17 regulation;

18 “(ii) there is no Prudential Regulator,
19 shall keep books and records in such form
20 and manner and for such period as may be
21 prescribed by the Commission by rule or
22 regulation;

23 “(C) shall keep the books and records open
24 to inspection and examination by any represent-
25 ative of the Commission; and

1 “(D) shall keep any such books and
2 records relating to swaps defined in section
3 1a(35)(A)(v) open to inspection and examina-
4 tion by the Securities and Exchange Commis-
5 sion.

6 “(2) RULES.—No later than 1 year after the
7 date of the enactment of the Derivative Markets
8 Transparency and Accountability Act of 2009, the
9 Commission shall adopt rules governing reporting
10 and recordkeeping for swap dealers and major swap
11 participants.

12 “(f) DAILY TRADING RECORDS.—

13 “(1) IN GENERAL.—Each registered swap deal-
14 er and major swap participant shall maintain daily
15 trading records of its swaps and all related records
16 (including related cash or forward transactions) and
17 recorded communications including but not limited
18 to electronic mail, instant messages, and recordings
19 of telephone calls, for such period as may be pre-
20 scribed by the Commission by rule or regulation.

21 “(2) INFORMATION REQUIREMENTS.—The daily
22 trading records shall include such information as the
23 Commission shall prescribe by rule or regulation.

24 “(3) CUSTOMER RECORDS.—Each registered
25 swap dealer and major swap participant shall main-

1 tain daily trading records for each customer or
2 counterparty in such manner and form as to be
3 identifiable with each swap transaction.

4 “(4) AUDIT TRAIL.—Each registered swap deal-
5 er and major swap participant shall maintain a com-
6 plete audit trail for conducting comprehensive and
7 accurate trade reconstructions.

8 “(5) RULES.—No later than 1 year after the
9 date of the enactment of the Derivative Markets
10 Transparency and Accountability Act of 2009, the
11 Commission shall adopt rules governing daily trad-
12 ing records for swap dealers and major swap partici-
13 pants.

14 “(g) BUSINESS CONDUCT STANDARDS.—

15 “(1) IN GENERAL.—Each registered swap deal-
16 er and major swap participant shall conform with
17 business conduct standards as may be prescribed by
18 the Commission by rule or regulation addressing—

19 “(A) fraud, manipulation, and other abu-
20 sive practices involving swaps (including swaps
21 that are offered but not entered into);

22 “(B) diligent supervision of its business as
23 a swap dealer;

24 “(C) adherence to all applicable position
25 limits; and

1 “(D) such other matters as the Commis-
2 sion shall determine to be necessary or appro-
3 priate.

4 “(2) BUSINESS CONDUCT REQUIREMENTS.—
5 Business conduct requirements adopted by the Com-
6 mission shall—

7 “(A) establish the standard of care for a
8 swap dealer or major swap participant to verify
9 that any counterparty meets the eligibility
10 standards for an eligible contract participant;

11 “(B) require disclosure by the swap dealer
12 or major swap participant to any counterparty
13 to the transaction (other than a swap dealer or
14 major swap participant) of—

15 “(i) information about the material
16 risks and characteristics of the swap;

17 “(ii) for cleared swaps, upon the re-
18 quest of the counterparty, the daily mark
19 from the appropriate derivatives clearing
20 organization, and for non-cleared swaps,
21 upon request of the counterparty, the daily
22 mark of the swap dealer or major swap
23 participant; and

24 “(iii) any other material incentives or
25 conflicts of interest that the swap dealer or

1 major swap participant may have in con-
2 nection with the swap; and

3 “(C) establish such other standards and
4 requirements as the Commission may determine
5 are necessary or appropriate in the public inter-
6 est, for the protection of investors, or otherwise
7 in furtherance of the purposes of this Act.

8 “(3) RULES.—The Commission shall prescribe
9 rules under this subsection governing business con-
10 duct standards for swap dealers and major swap
11 participants no later than 1 year after the date of
12 the enactment of the Derivative Markets Trans-
13 parency and Accountability Act of 2009.

14 “(h) DOCUMENTATION STANDARDS.—

15 “(1) IN GENERAL.—Each registered swap deal-
16 er and major swap participant shall conform with
17 standards, as may be prescribed by the Commission
18 by rule or regulation, addressing timely and accurate
19 confirmation, processing, netting, documentation,
20 and valuation of all swaps.

21 “(2) RULES.—No later than 1 year after the
22 date of the enactment of the Derivative Markets
23 Transparency and Accountability Act of 2009, the
24 Commission shall adopt rules governing the stand-

1 ards described in paragraph (1) for swap dealers
2 and major swap participants.

3 “(i) DEALER RESPONSIBILITIES.—Each registered
4 swap dealer and major swap participant at all times shall
5 comply with the following requirements:

6 “(1) MONITORING OF TRADING.—The swap
7 dealer or major swap participant shall monitor its
8 trading in swaps to prevent violations of applicable
9 position limits.

10 “(2) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The swap dealer or major swap participant
12 shall disclose to the Commission or to the Prudential
13 Regulator for the swap dealer or major swap partici-
14 pant, as applicable, information concerning—

15 “(A) terms and conditions of its swaps;

16 “(B) swap trading operations, mechanisms,
17 and practices;

18 “(C) financial integrity protections relating
19 to swaps; and

20 “(D) other information relevant to its trad-
21 ing in swaps.

22 “(3) ABILITY TO OBTAIN INFORMATION.—The
23 swap dealer or major swap participant shall—

24 “(A) establish and enforce internal systems
25 and procedures to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this section; and

3 “(B) provide the information to the Com-
4 mission or to the Prudential Regulator for the
5 swap dealer or major swap participant, as ap-
6 plicable, upon request.

7 “(4) CONFLICTS OF INTEREST.—The swap
8 dealer and major swap participant shall implement
9 conflict-of-interest systems and procedures that—

10 “(A) establish structural and institutional
11 safeguards to assure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any com-
14 modity are separated by appropriate informa-
15 tional partitions within the firm from the re-
16 view, pressure, or oversight of those whose in-
17 volvement in trading or clearing activities might
18 potentially bias their judgment or supervision;
19 and

20 “(B) address such other issues as the
21 Commission determines appropriate.

22 “(5) ANTITRUST CONSIDERATIONS.—The swap
23 dealer or major swap participant shall avoid—

1 “(A) adopting any processes or taking any
2 actions that result in any unreasonable re-
3 straints of trade; or

4 “(B) imposing any material anticompeti-
5 tive burden on trading.”.

6 **SEC. 3108. CONFLICTS OF INTEREST.**

7 Section 4d of the Commodity Exchange Act (7 U.S.C.
8 6d) is amended by—

9 (1) redesignating subsection (c) as subsection
10 (d); and

11 (2) inserting after subsection (b) the following:

12 “(c) CONFLICTS OF INTEREST.—The Commission
13 shall require that futures commission merchants and in-
14 troducing brokers implement conflict-of-interest systems
15 and procedures that—

16 “(1) establish structural and institutional safe-
17 guards to assure that the activities of any person
18 within the firm relating to research or analysis of
19 the price or market for any commodity are separated
20 by appropriate informational partitions within the
21 firm from the review, pressure, or oversight of those
22 whose involvement in trading or clearing activities
23 might potentially bias their judgment or supervision;
24 and

1 “(2) address such other issues as the Commis-
2 sion determines appropriate.”.

3 **SEC. 3109. SWAP EXECUTION FACILITIES.**

4 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
5 is amended by inserting after section 5g the following:

6 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

7 “(a) REGISTRATION.—A person may not operate a
8 swap execution facility unless the facility is registered
9 under this section or is registered with the Commission
10 as a designated contract market under section 5 or a swap
11 execution facility under section 5.

12 “(b) REQUIREMENTS FOR TRADING.—

13 “(1) A swap execution facility that is registered
14 under subsection (a) may make available for trading
15 any swap.

16 “(2) RULES FOR TRADING THROUGH THE FA-
17 CILITY.—Not later than 1 year after the date of the
18 enactment of the Derivative Markets Transparency
19 and Accountability Act of 2009, the Commission
20 shall adopt rules to allow a swap to be traded
21 through the facilities of a designated contract mar-
22 ket or a swap execution facility. Such rules shall
23 permit an intermediary, acting as principal or agent,
24 to enter into or execute a swap, notwithstanding sec-
25 tion 2(k), if the swap is executed, reported, recorded,

1 or confirmed in accordance with the rules of the des-
2 ignated contract market or swap execution facility.

3 “(3) AGRICULTURAL SWAPS.—A swap execution
4 facility may not list for trading or confirm the exe-
5 cution of any swap in an agricultural commodity (as
6 defined by the Commission) except pursuant to a
7 rule or regulation of the Commission allowing the
8 swap under such terms and conditions as the Com-
9 mission shall prescribe.

10 “(c) TRADING BY CONTRACT MARKETS.—A board of
11 trade that operates a contract market shall, to the extent
12 that the board of trade also operates a swap execution fa-
13 cility and uses the same electronic trade execution system
14 for trading on the contract market and the swap execution
15 facility, identify whether the electronic trading is taking
16 place on the contract market or the swap execution facil-
17 ity.

18 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
19 CILITIES.—

20 “(1) IN GENERAL.—To be registered as, and to
21 maintain its registration as, a swap execution facil-
22 ity, the facility shall comply with the core principles
23 specified in this subsection and any requirement that
24 the Commission may impose by rule or regulation
25 pursuant to section 8a(5). Except where the Com-

mission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(i) provide market participants with impartial access to the market; and

“(ii) capture information that may be used in establishing whether rule violations have occurred.

“(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

1 “(4) MONITORING OF TRADING.—The swap
2 execution facility shall—

3 “(A) establish and enforce rules or terms
4 and conditions defining, or specifications detail-
5 ing, trading procedures to be used in entering
6 and executing orders traded on or through its
7 facilities; and

8 “(B) monitor trading in swaps to prevent
9 manipulation, price distortion, and disruptions
10 of the delivery or cash settlement process
11 through surveillance, compliance, and discipli-
12 nary practices and procedures, including meth-
13 ods for conducting real-time monitoring of trad-
14 ing and comprehensive and accurate trade re-
15 constructions.

16 “(5) ABILITY TO OBTAIN INFORMATION.—The
17 swap execution facility shall—

18 “(A) establish and enforce rules that will
19 allow the facility to obtain any necessary infor-
20 mation to perform any of the functions de-
21 scribed in this section;

22 “(B) provide the information to the Com-
23 mission upon request; and

1 “(C) have the capacity to carry out such
2 international information-sharing agreements as
3 the Commission may require.

4 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

5 “(A) To reduce the potential threat of
6 market manipulation or congestion, especially
7 during trading in the delivery month, a swap
8 execution facility that is a trading facility shall
9 adopt for each of its contracts made available
10 for trading on the trading facility, where nec-
11 essary and appropriate, position limitations or
12 position accountability for speculators who es-
13 tablish positions in the contract.

14 “(B) For any contract of a swap execution
15 facility that is subject to a position limitation
16 established by the Commission pursuant to sec-
17 tion 4a(a), the swap execution facility—

18 “(i) may set a position limitation at a
19 level that is lower than the Commission
20 limitation; and

21 “(ii) shall monitor positions estab-
22 lished on or through the swap execution fa-
23 cility for compliance with the limit set by
24 the Commission and the limit, if any, set
25 by the swap execution facility.

1 “(7) FINANCIAL INTEGRITY OF TRANS-
2 ACTIONS.—The swap execution facility shall estab-
3 lish and enforce rules and procedures for ensuring
4 the financial integrity of swaps entered on or
5 through its facilities, including the clearance and
6 settlement of the swaps pursuant to section 2(j)(1).

7 “(8) EMERGENCY AUTHORITY.—The swap exe-
8 cution facility shall adopt rules to provide for the ex-
9 ercise of emergency authority, in consultation or co-
10 operation with the Commission, where necessary and
11 appropriate, including the authority to liquidate or
12 transfer open positions in any swap or to suspend or
13 curtail trading in a swap.

14 “(9) TIMELY PUBLICATION OF TRADING INFOR-
15 MATION.—The swap execution facility shall make
16 public timely information on price, trading volume,
17 and other trading data on swaps to the extent pre-
18 scribed by the Commission. The Commission shall
19 evaluate the impact of public disclosure on market
20 liquidity in the relevant market, and shall seek to
21 avoid public disclosure of information in a manner
22 that would significantly reduce market liquidity. The
23 Commission shall not disclose information related to
24 the internal business decisions of particular market
25 participants.

1 “(10) RECORDKEEPING AND REPORTING.—The
2 swap execution facility shall maintain records of all
3 activities related to the business of the facility, in-
4 cluding a complete audit trail, in a form and manner
5 acceptable to the Commission for a period of 5
6 years, and report to the Commission all information
7 determined by the Commission to be necessary or
8 appropriate for the Commission to perform its re-
9 sponsibilities under this Act in a form and manner
10 acceptable to the Commission. The swap execution
11 facility shall keep any such records relating to swaps
12 defined in section 1a(35)(A)(v) open to inspection
13 and examination by the Securities and Exchange
14 Commission. The Commission shall adopt data col-
15 lection and reporting requirements for swap execu-
16 tion facilities that are comparable to corresponding
17 requirements for derivatives clearing organizations
18 and swap repositories.

19 “(11) ANTITRUST CONSIDERATIONS.—The
20 swap execution facility shall avoid—

21 “(A) adopting any rules or taking any ac-
22 tions that result in any unreasonable restraints
23 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading on the swap execution
3 facility.

4 “(12) CONFLICTS OF INTEREST.—The swap
5 execution facility shall—

6 “(A) establish and enforce rules to mini-
7 mize conflicts of interest in its decision-making
8 process; and

9 “(B) establish a process for resolving the
10 conflicts of interest.

11 “(13) FINANCIAL RESOURCES.—

12 “(A) The swap execution facility shall have
13 adequate financial, operational, and managerial
14 resources to discharge its responsibilities.

15 “(B) The financial resources of the swap
16 execution facility shall be considered adequate if
17 their value exceeds the total amount that would
18 enable the facility to cover its operating costs
19 for a period of 1 year, calculated on a rolling
20 basis.

21 “(14) SYSTEM SAFEGUARDS.—The swap execu-
22 tion facility shall—

23 “(A) establish and maintain a program of
24 risk analysis and oversight to identify and mini-
25 mize sources of operational risk, through the

1 development of appropriate controls and proce-
2 dures, and the development of automated sys-
3 tems, that are reliable, secure, and have ade-
4 quate scalable capacity;

5 “(B) establish and maintain emergency
6 procedures, backup facilities, and a plan for dis-
7 aster recovery that allow for the timely recovery
8 and resumption of operations and the fulfill-
9 ment of the swap execution facility’s respon-
10 sibilities and obligation; and

11 “(C) periodically conduct tests to verify
12 that backup resources are sufficient to ensure
13 continued order processing and trade matching,
14 price reporting, market surveillance, and main-
15 tenance of a comprehensive and accurate audit
16 trail.

17 “(15) DESIGNATION OF COMPLIANCE OFFI-
18 CER.—

19 “(A) IN GENERAL.—Each swap execution
20 facility shall designate an individual to serve as
21 a compliance officer.

22 “(B) DUTIES.—The compliance officer—

23 “(i) shall report directly to the board
24 or to the senior officer of the facility;

25 “(ii) shall—

1 “(I) review compliance with the
2 core principles in this subsection;

3 “(II) in consultation with the
4 board of the facility, a body per-
5 forming a function similar to that of
6 a board, or the senior officer of the
7 facility, resolve any conflicts of inter-
8 est that may arise;

9 “(III) be responsible for admin-
10 istering the policies and procedures
11 required to be established pursuant to
12 this section; and

13 “(IV) ensure compliance with
14 this Act and the rules and regulations
15 issued under this Act, including rules
16 prescribed by the Commission pursu-
17 ant to this section; and

18 “(iii) shall establish procedures for re-
19 mediation of non-compliance issues found
20 during compliance office reviews,
21 lookbacks, internal or external audit find-
22 ings, self-reported errors, or through vali-
23 dated complaints, and for the handling,
24 management response, remediation, re-

1 testing, and closing of non-compliant
2 issues.

3 “(C) ANNUAL REPORTS REQUIRED.—The
4 compliance officer shall annually prepare and
5 sign a report on the compliance of the facility
6 with this Act and its policies and procedures,
7 including its code of ethics and conflict of inter-
8 est policies, in accordance with rules prescribed
9 by the Commission. The compliance report shall
10 accompany the financial reports of the facility
11 that are required to be furnished to the Com-
12 mission pursuant to this section and shall in-
13 clude a certification that, under penalty of law,
14 the report is accurate and complete.

15 “(e) EXEMPTIONS.—The Commission may exempt,
16 conditionally or unconditionally, a swap execution facility
17 from registration under this section if the Commission
18 finds that the facility is subject to comparable, comprehen-
19 sive supervision and regulation on a consolidated basis by
20 the Securities and Exchange Commission, a Prudential
21 Regulator or the appropriate governmental authorities in
22 the organization’s home country.

23 “(f) RULES.—No later than 1 year after the date of
24 the enactment of the Derivative Markets Transparency
25 and Accountability Act of 2009, the Commission shall pre-

1 scribe rules governing the regulation of swap execution fa-
2 cilities under this section.”.

3 **SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILI-**
4 **TIES AND EXEMPT BOARDS OF TRADE.**

5 (a) Sections 5a and 5d of the Commodity Exchange
6 Act (7 U.S.C. 1 et seq.) are repealed.

7 (b)(1) Prior to the final effective dates in this title,
8 a person may petition the Commodity Futures Trading
9 Commission to remain subject to the provisions of section
10 5d of the Commodity Exchange Act, as such provisions
11 existed prior to the effective date of this subtitle.

12 (2) The Commodity Futures Trading Commission
13 shall consider any petition submitted under paragraph (1)
14 in a prompt manner and may allow a person to continue
15 operating subject to the provisions of section 5d of the
16 Commodity Exchange Act for up to 1 year after the effec-
17 tive date of this subtitle.

18 **SEC. 3111. DESIGNATED CONTRACT MARKETS.**

19 (a) Section 5(d) of the Commodity Exchange Act (7
20 U.S.C. 7(d)) is amended by striking paragraphs (1) and
21 (2) and inserting the following:

22 “(1) IN GENERAL.—To be designated as, and
23 to maintain the designation of a board of trade as
24 a contract market, the board of trade shall comply
25 with the core principles specified in this subsection

1 and any requirement that the Commission may im-
2 pose by rule or regulation pursuant to section 8a(5).
3 Except where the Commission determines otherwise
4 by rule or regulation, the board of trade shall have
5 reasonable discretion in establishing the manner in
6 which it complies with the core principles.

7 “(2) COMPLIANCE WITH RULES.—

8 “(A) The board of trade shall monitor and
9 enforce compliance with the rules of the con-
10 tract market, including access requirements, the
11 terms and conditions of any contracts to be
12 traded on the contract market and the contract
13 market’s abusive trade practice prohibitions.

14 “(B) The board of trade shall have the ca-
15 pacity to detect, investigate, and apply appro-
16 priate sanctions to, any person or entity that
17 violates the rules.

18 “(C) The rules shall provide the board of
19 trade with the ability and authority to obtain
20 any necessary information to perform any of
21 the functions described in this subsection, in-
22 cluding the capacity to carry out such inter-
23 national information-sharing agreements as the
24 Commission may require.”.

1 (b) Section 5(d) of such Act (7 U.S.C. 7(d)) is
2 amended by striking paragraphs (4) and (5) and inserting
3 the following:

4 “(4) PREVENTION OF MARKET DISRUPTION.—

5 The board of trade shall have the capacity and re-
6 sponsibility to prevent manipulation, price distortion,
7 and disruptions of the delivery or cash-settlement
8 process through market surveillance, compliance,
9 and enforcement practices and procedures, including
10 methods for conducting real-time monitoring of trad-
11 ing and comprehensive and accurate trade recon-
12 structions.

13 “(5) POSITION LIMITATIONS OR ACCOUNT-
14 ABILITY.—

15 “(A) To reduce the potential threat of
16 market manipulation or congestion, especially
17 during trading in the delivery month, the board
18 of trade shall adopt for each of its contracts,
19 where necessary and appropriate, position limi-
20 tations or position accountability for specu-
21 lators.

22 “(B) For any contract that is subject to a
23 position limitation established by the Commis-
24 sion pursuant to section 4a(a), the board of
25 trade shall set its position limitation at a level

1 no higher than the Commission-established limi-
2 tation.”.

3 (c) Section 5(d) of such Act (7 U.S.C. 7(d)) is
4 amended by striking paragraph (7) and inserting the fol-
5 lowing:

6 “(7) AVAILABILITY OF GENERAL INFORMA-
7 TION.—The board of trade shall make available to
8 market authorities, market participants, and the
9 public accurate information concerning—

10 “(A) the terms and conditions of the con-
11 tracts of the contract market; and

12 “(B) the rules, regulations and mecha-
13 nisms for executing transactions on or through
14 the facilities of the contract market, and the
15 rules and specifications describing the operation
16 of the board of trade’s electronic matching plat-
17 form or other trade execution facility.”.

18 (d) Section 5(d) of such Act (7 U.S.C. 7(d)) is
19 amended by striking paragraph (9) and inserting the fol-
20 lowing:

21 “(9) EXECUTION OF TRANSACTIONS.—

22 “(A) The board of trade shall provide a
23 competitive, open, and efficient market and
24 mechanism for executing transactions that pro-

1 tects the price discovery process of trading in
2 the board of trade’s centralized market.

3 “(B) The rules may authorize, for bona
4 fide business purposes—

5 “(i) transfer trades or office trades;

6 “(ii) an exchange of—

7 “(I) futures in connection with a
8 cash commodity transaction;

9 “(II) futures for cash commod-
10 ities; or

11 “(III) futures for swaps; or

12 “(iii) A futures commission merchant,
13 acting as principal or agent, to enter into
14 or confirm the execution of a contract for
15 the purchase or sale of a commodity for fu-
16 ture delivery if the contract is reported, re-
17 corded, or cleared in accordance with the
18 rules of the contract market or a deriva-
19 tives clearing organization.”.

20 (e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17))
21 is amended by adding at the end the following: “The board
22 of trade shall keep any such records relating to swaps de-
23 fined in section 1a(35)(A)(v) open to inspection and exam-
24 ination by the Securities and Exchange Commission.”.

1 (f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amend-
2 ed by adding at the end the following:

3 “(19) FINANCIAL RESOURCES.—The board of
4 trade shall have adequate financial, operational, and
5 managerial resources to discharge the responsibil-
6 ities of a contract market. For the financial re-
7 sources of a board of trade to be considered ade-
8 quate, their value shall exceed the total amount that
9 would enable the contract market to cover its oper-
10 ating costs for a period of 1 year, calculated on a
11 rolling basis.

12 “(20) SYSTEM SAFEGUARDS.—The board of
13 trade shall—

14 “(A) establish and maintain a program of
15 risk analysis and oversight to identify and mini-
16 mize sources of operational risk through the de-
17 velopment of appropriate controls and proce-
18 dures, and the development of automated sys-
19 tems, that are reliable, secure, and give ade-
20 quate scalable capacity;

21 “(B) establish and maintain emergency
22 procedures, backup facilities, and a plan for dis-
23 aster recovery that allow for the timely recovery
24 and resumption of operations and the fulfill-

1 ment of the board of trade’s responsibilities and
2 obligations; and

3 “(C) periodically conduct tests to verify
4 that back-up resources are sufficient to ensure
5 continued order processing and trade matching,
6 price reporting, market surveillance, and main-
7 tenance of a comprehensive and accurate audit
8 trail.

9 “(21) DIVERSITY OF BOARDS OF DIRECTORS.—

10 The board of trade, if a publicly traded company,
11 shall endeavor to recruit individuals to serve on the
12 board of directors and the other decision-making
13 bodies (as determined by the Commission) of the
14 board of trade from among, and to have the com-
15 position of the bodies reflect, a broad and culturally
16 diverse pool of qualified candidates.

17 “(22) DISCIPLINARY PROCEDURES.—The board
18 of trade shall establish and enforce disciplinary pro-
19 cedures that authorize the board of trade to dis-
20 cipline, suspend, or expel members or market par-
21 ticipants that violate the rules of the board of trade,
22 or similar methods for performing the same func-
23 tions, including delegation of the functions to third
24 parties.”.

1 (g) Section 5 of such Act (7 U.S.C. 7) is amended
2 by striking subsection (b).

3 **SEC. 3112. MARGIN.**

4 (a) Section 8a(7)(C) of the Commodity Exchange Act
5 (7 U.S.C. 12a(7)(C)) is amended by striking “, excepting
6 the setting of levels of margin”.

7 (b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is
8 amended by redesignating subparagraphs (D) through (F)
9 as subparagraphs (E) through (G), respectively, and in-
10 serting after subparagraph (C) the following:

11 “(D) margin requirements, provided that
12 such rules, regulations, or orders shall—

13 “(i) be limited to protecting the finan-
14 cial integrity of the derivatives clearing or-
15 ganization;

16 “(ii) be designed for risk management
17 purposes in order to protect the financial
18 integrity of transactions; and

19 “(iii) not set specific margin
20 amounts.”.

21 **SEC. 3113. POSITION LIMITS.**

22 (a) Section 4a(a) of the Commodity Exchange Act (7
23 U.S.C. 6a(a)) is amended by—

24 (1) inserting “(1)” after “(a)”;

1 (2) striking “on electronic trading facilities with
2 respect to a significant price discovery contract” in
3 the first sentence and inserting “swaps that perform
4 or affect a significant price discovery function with
5 respect to registered entities”;

6 (3) inserting “, including any group or class of
7 traders,” in the second sentence after “held by any
8 person”;

9 (4) striking “on an electronic trading facility
10 with respect to a significant price discovery con-
11 tract,” in the second sentence and inserting “swaps
12 that perform or affect a significant price discovery
13 function with respect to registered entities,”; and

14 (5) inserting at the end the following:

15 “(2)(A) In accordance with the standards set
16 forth in paragraph (1) of this subsection and con-
17 sistent with the good faith exception cited in sub-
18 section (b)(2), with respect to physical commodities
19 other than excluded commodities as defined by the
20 Commission, the Commission shall by rule, regula-
21 tion, or order establish limits on the amount of posi-
22 tions, as appropriate, other than bona fide hedge po-
23 sitions, that may be held by any person with respect
24 to contracts of sale for future delivery or with re-
25 spect to options on the contracts or commodities

1 traded on or subject to the rules of a designated
2 contract market.

3 “(B)(i) For exempt commodities, the limits
4 shall be established within 180 days after the date
5 of the enactment of this paragraph.

6 “(ii) For agricultural commodities, the limits
7 shall be established within 270 days after the date
8 of the enactment of this paragraph.

9 “(C) In establishing the limits, the Commission
10 shall strive to ensure that trading on foreign boards
11 of trade in the same commodity will be subject to
12 comparable limits and that any limits to be imposed
13 by the Commission will not cause price discovery in
14 the commodity to shift to trading on the foreign
15 boards of trade.

16 “(3) In establishing the limits required in para-
17 graph (2), the Commission, as appropriate, shall set
18 limits—

19 “(A) on the number of positions that may
20 be held by any person for the spot month, each
21 other month, and the aggregate number of posi-
22 tions that may be held by any person for all
23 months; and

24 “(B) to the maximum extent practicable,
25 in its discretion—

1 “(i) to diminish, eliminate, or prevent
2 excessive speculation as described under
3 this section;

4 “(ii) to deter and prevent market ma-
5 nipulation, squeezes, and corners;

6 “(iii) to ensure sufficient market li-
7 quidity for bona fide hedgers; and

8 “(iv) to ensure that the price dis-
9 covery function of the underlying market is
10 not disrupted.

11 “(4)(A) Not later than 150 days after the es-
12 tablishment of position limits pursuant to paragraph
13 (2), and biannually thereafter, the Commission shall
14 hold 2 public hearings, 1 for agriculture commodities
15 and 1 for energy commodities as such terms are de-
16 fined by the Commission, in order to receive rec-
17 ommendations regarding the position limits to be es-
18 tablished in paragraph (2).

19 “(B) Each public hearing held pursuant to sub-
20 paragraph (A) shall, at a minimum providing there
21 is sufficient interest, receive recommendations
22 from—

23 “(i) 7 predominantly commercial short
24 hedgers of the actual physical commodity for
25 future delivery;

1 “(ii) 7 predominantly commercial long
2 hedgers of the actual physical commodity for
3 future delivery;

4 “(iii) 4 non-commercial participants in
5 markets for commodities for future delivery;
6 and

7 “(iv) each designated contract market
8 upon which a contract in the commodity for fu-
9 ture delivery is traded.

10 “(C) Within 60 days after each public hearing
11 held pursuant to subparagraph (A), the Commission
12 shall publish in the Federal Register its response to
13 the recommendations regarding position limits heard
14 at the hearing.

15 “(5) SIGNIFICANT PRICE DISCOVERY FUNC-
16 TION.—In making a determination whether a swap
17 performs or affects a significant price discovery
18 function with respect to regulated markets, the Com-
19 mission shall consider, as appropriate:

20 “(A) PRICE LINKAGE.—The extent to
21 which the swap uses or otherwise relies on a
22 daily or final settlement price, or other major
23 price parameter, of another contract traded on
24 a regulated market based upon the same under-
25 lying commodity, to value a position, transfer or

1 convert a position, financially settle a position,
2 or close out a position;

3 “(B) ARBITRAGE.—The extent to which
4 the price for the swap is sufficiently related to
5 the price of another contract traded on a regu-
6 lated market based upon the same underlying
7 commodity so as to permit market participants
8 to effectively arbitrage between the markets by
9 simultaneously maintaining positions or exe-
10 cuting trades in the swaps on a frequent and
11 recurring basis;

12 “(C) MATERIAL PRICE REFERENCE.—The
13 extent to which, on a frequent and recurring
14 basis, bids, offers, or transactions in a contract
15 traded on a regulated market are directly based
16 on, or are determined by referencing, the price
17 generated by the swap;

18 “(D) MATERIAL LIQUIDITY.—The extent
19 to which the volume of swaps being traded in
20 the commodity is sufficient to have a material
21 effect on another contract traded on a regulated
22 market; and

23 “(E) OTHER MATERIAL FACTORS.—Such
24 other material factors as the Commission speci-
25 fies by rule or regulation as relevant to deter-

1 mine whether a swap serves a significant price
2 discovery function with respect to a regulated
3 market.

4 “(6) ECONOMICALLY EQUIVALENT CON-
5 TRACTS.—

6 “(A) Notwithstanding any other provision
7 of this section, the Commission shall establish
8 limits on the amount of positions, including ag-
9 gregate position limits, as appropriate, other
10 than bona fide hedge positions, that may be
11 held by any person with respect to swaps that
12 are economically equivalent to contracts of sale
13 for future delivery or to options on the con-
14 tracts or commodities traded on or subject to
15 the rules of a designated contract market sub-
16 ject to paragraph (2).

17 “(B) In establishing limits pursuant to
18 subparagraph (A), the Commission shall—

19 “(i) develop the limits concurrently
20 with limits established under paragraph
21 (2), and the limits shall have similar re-
22 quirements as under paragraph (3)(B);
23 and

1 “(ii) establish the limits simulta-
2 neously with limits established under para-
3 graph (2).

4 “(7) AGGREGATE POSITION LIMITS.—The Com-
5 mission shall, by rule or regulation, establish limits
6 (including related hedge exemption provisions) on
7 the aggregate number or amount of positions in con-
8 tracts based upon the same underlying commodity
9 (as defined by the Commission) that may be held by
10 any person, including any group or class of traders,
11 for each month across—

12 “(A) contracts listed by designated con-
13 tract markets;

14 “(B) with respect to an agreement con-
15 tract, or transaction that settles against any
16 price (including the daily or final settlement
17 price) of 1 or more contracts listed for trading
18 on a registered entity, contracts traded on a
19 foreign board of trade that provides members or
20 other participants located in the United States
21 with direct access to its electronic trading and
22 order matching system; and

23 “(C) swap contracts that perform or affect
24 a significant price discovery function with re-
25 spect to regulated entities.

1 “(8) EXEMPTIONS.—The Commission, by rule,
2 regulation, or order, may exempt, conditionally or
3 unconditionally, any person or class of persons, any
4 swap or class of swaps, any contract of sale of a
5 commodity for future delivery or class of such con-
6 tracts, any option or class of options, or any trans-
7 action or class of transactions from any requirement
8 it may establish under this section with respect to
9 position limits.”.

10 (b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is
11 amended—

12 (1) in paragraph (1), by striking “or derivatives
13 transaction execution facility or facilities or elec-
14 tronic trading facility” and inserting “or swap exe-
15 cution facility or facilities”; and

16 (2) in paragraph (2), by striking “or derivatives
17 transaction execution facility or facilities or elec-
18 tronic trading facility” and inserting “or swap exe-
19 cution facility”.

20 (c) Section 4a(c) of such Act is amended—

21 (1) by inserting “(1)” after “(c)”; and

22 (2) by adding after and below the end the fol-
23 lowing:

24 “(2) For the purposes of implementation of
25 subsection (a)(2) for contracts of sale for future de-

1 livery or options on the contracts or commodities,
2 the Commission shall define what constitutes a bona
3 fide hedging transaction or position as a transaction
4 or position that—

5 “(A)(i) represents a substitute for trans-
6 actions made or to be made or positions taken
7 or to be taken at a later time in a physical mar-
8 keting channel;

9 “(ii) is economically appropriate to the re-
10 duction of risks in the conduct and manage-
11 ment of a commercial enterprise; and

12 “(iii) arises from the potential change in
13 the value of—

14 “(I) assets that a person owns, pro-
15 duces, manufactures, processes, or mer-
16 chandises or anticipates owning, producing,
17 manufacturing, processing, or merchan-
18 dising;

19 “(II) liabilities that a person owns or
20 anticipates incurring; or

21 “(III) services that a person provides,
22 purchases, or anticipates providing or pur-
23 chasing; or

24 “(B) reduces risks attendant to a position
25 resulting from a swap that—

1 “(i) was executed opposite a
 2 counterparty for which the transaction
 3 would qualify as a bona fide hedging trans-
 4 action pursuant to subparagraph (A); or
 5 “(ii) meets the requirements of sub-
 6 paragraph (A).”.

7 (d) This section shall become effective on the date
 8 of its enactment.

9 **SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED EN-**
 10 **TITIES.**

11 (a) Section 5c(a) of the Commodity Exchange Act (7
 12 U.S.C. 7a–2(a)) is amended—

13 (1) in paragraph (1), by striking “5a(d) and
 14 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

15 (2) in paragraph (2), by striking “shall not”
 16 and inserting “may”.

17 (b) Section 5c(b) of such Act (7 U.S.C. 7a–2(b)) is
 18 amended in each of paragraphs (1), (2), and (3) by insert-
 19 ing “or swap execution facility” after “contract market”
 20 each place it appears.

21 (c) Section 5c(c)(1) of such Act (7 U.S.C. 7a–
 22 2(c)(1)) is amended—

23 (1) by inserting “(A)” after “IN GENERAL.—”;
 24 and

25 (2) by adding at the end the following:

1 “(B) The new rule or rule amendment shall be-
2 come effective, pursuant to the registered entity’s
3 certification and notice of such certification to its
4 members (in a manner to be determined by the
5 Commission), 10 business days after the Commis-
6 sion’s receipt of the certification (or such shorter pe-
7 riod determined by the Commission by rule or regu-
8 lation) unless the Commission notifies the registered
9 entity within such time that it is staying the certifi-
10 cation because there exist novel or complex issues
11 that require additional time to analyze, an inad-
12 equate explanation by the submitting registered enti-
13 ty, or a potential inconsistency with this Act (includ-
14 ing regulations under this Act).

15 “(C)(i) A notification by the Commission pursu-
16 ant to subparagraph (B) shall stay the certification
17 of the new contract or instrument or clearing of the
18 new contract or instrument, new rule or new amend-
19 ment for up to an additional 90 days from the date
20 of the notification.

21 “(ii) The Commission shall provide at least a
22 30-day public comment period, within the 90-day pe-
23 riod in which the stay is in effect described in clause
24 (i), whenever it reviews a rule or rule amendment

1 pursuant to a notification by the Commission under
2 this paragraph.”.

3 (d) Section 5c(d) of such Act (7 U.S.C. 7a–2(d)) is
4 repealed.

5 **SEC. 3115. FOREIGN BOARDS OF TRADE.**

6 (a) IN GENERAL.—Section 4 of the Commodity Ex-
7 change Act (7 U.S.C. 6) is amended by adding at the end
8 the following:

9 “(e) FOREIGN BOARDS OF TRADE.—

10 “(1) IN GENERAL.—The Commission may not
11 permit a foreign board of trade to provide to the
12 members of the foreign board of trade or other par-
13 ticipants located in the United States direct access
14 to the electronic trading and order-matching system
15 of the foreign board of trade with respect to an
16 agreement, contract, or transaction that settles
17 against any price (including the daily or final settle-
18 ment price) of 1 or more contracts listed for trading
19 on a registered entity, unless the Commission deter-
20 mines that—

21 “(A) the foreign board of trade makes pub-
22 lic daily trading information regarding the
23 agreement, contract, or transaction that is com-
24 parable to the daily trading information pub-
25 lished by the registered entity for the 1 or more

1 contracts against which the agreement, con-
2 tract, or transaction traded on the foreign
3 board of trade settles; and

4 “(B) the foreign board of trade (or the for-
5 eign futures authority that oversees the foreign
6 board of trade)—

7 “(i) adopts position limits (including
8 related hedge exemption provisions) for the
9 agreement, contract, or transaction that
10 are comparable, taking into consideration
11 the relative sizes of the respective markets,
12 to the position limits (including related
13 hedge exemption provisions) adopted by
14 the registered entity for the 1 or more con-
15 tracts against which the agreement, con-
16 tract, or transaction traded on the foreign
17 board of trade settles;

18 “(ii) has the authority to require or
19 direct market participants to limit, reduce,
20 or liquidate any position the foreign board
21 of trade (or the foreign futures authority
22 that oversees the foreign board of trade)
23 determines to be necessary to prevent or
24 reduce the threat of price manipulation,
25 excessive speculation as described in sec-

tion 4a, price distortion, or disruption of
delivery or the cash settlement process;

“(iii) agrees to promptly notify the
Commission, with regard to the agreement,
contract, or transaction that settles against
any price (including the daily or final set-
tlement price) of 1 or more contracts listed
for trading on a registered entity, of any
change regarding—

“(I) the information that the for-
eign board of trade will make publicly
available;

“(II) the position limits that the
foreign board of trade or foreign fu-
tures authority will adopt and enforce;

“(III) the position reductions re-
quired to prevent manipulation, exces-
sive speculation as described in sec-
tion 4a, price distortion, or disruption
of delivery or the cash settlement
process; and

“(IV) any other area of interest
expressed by the Commission to the
foreign board of trade or foreign fu-
tures authority;

1 “(iv) provides information to the
2 Commission regarding large trader posi-
3 tions in the agreement, contract, or trans-
4 action that is comparable to the large trad-
5 er position information collected by the
6 Commission for the 1 or more contracts
7 against which the agreement, contract, or
8 transaction traded on the foreign board of
9 trade settles; and

10 “(v) provides the Commission with in-
11 formation necessary to publish reports on
12 aggregate trader positions for the agree-
13 ment, contract, or transaction traded on
14 the foreign board of trade that are com-
15 parable to the reports on aggregate trader
16 positions for the 1 or more contracts
17 against which the agreement, contract, or
18 transaction traded on the foreign board of
19 trade settles.

20 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

21 Paragraph (1) shall not be effective with respect to
22 any foreign board of trade to which the Commission
23 has granted direct access permission before the date
24 of the enactment of this subsection until the date
25 that is 180 days after such date of enactment.

1 “(3) PERSONS LOCATED IN THE UNITED
2 STATES.—”.

3 (b) LIABILITY OF REGISTERED PERSONS TRADING
4 ON A FOREIGN BOARD OF TRADE.—

5 (1) Section 4(a) of such Act (7. U.S.C. 6(a)) is
6 amended by inserting “or by subsection (f)” after
7 “Unless exempted by the Commission pursuant to
8 subsection (c)”; and

9 (2) Section 4 of such Act (7 U.S.C. 6) is fur-
10 ther amended by adding at the end the following:

11 “(f)(1) A person registered with the Commission, or
12 exempt from registration by the Commission, under this
13 Act may not be found to have violated subsection (a) with
14 respect to a transaction in, or in connection with, a con-
15 tract of sale of a commodity for future delivery if the per-
16 son—

17 “(A) has reason to believe that the transaction
18 and the contract is made on or subject to the rules
19 of a foreign board of trade that is—

20 “(i) legally organized under the laws of a
21 foreign country;

22 “(ii) authorized to act as a board of trade
23 by a foreign futures authority; and

24 “(iii) subject to regulation by the foreign
25 futures authority; and

1 “(B) has not been determined by the Commis-
2 sion to be operating in violation of subsection (a).

3 “(2) Nothing in this subsection shall be construed as
4 implying or creating any presumption that a board of
5 trade, exchange, or market is located outside the United
6 States, or its territories or possessions, for purposes of
7 subsection (a).”.

8 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
9 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.
10 25(a)) is amended by adding at the end the following:

11 “(5) CONTRACT ENFORCEMENT FOR FOREIGN
12 FUTURES CONTRACTS.—A contract of sale of a com-
13 modity for future delivery traded or executed on or
14 through the facilities of a board of trade, exchange,
15 or market located outside the United States for pur-
16 poses of section 4(a) shall not be void, voidable, or
17 unenforceable, and a party to such a contract shall
18 not be entitled to rescind or recover any payment
19 made with respect to the contract, based on the fail-
20 ure of the foreign board of trade to comply with any
21 provision of this Act.”.

22 **SEC. 3116. LEGAL CERTAINTY FOR SWAPS.**

23 Section 22(a)(4) of the Commodity Exchange Act (7
24 U.S.C. 25(a)(4)) is amended to read as follows:

1 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
2 GIBLE COUNTERPARTIES.—

3 “(A) A hybrid instrument sold to any in-
4 vestor shall not be void, voidable, or unenforce-
5 able, and a party to such a hybrid instrument
6 shall not be entitled to rescind, or recover any
7 payment made with respect to, such a hybrid
8 instrument under this section or any other pro-
9 vision of Federal or State law, based solely on
10 the failure of the hybrid instrument to comply
11 with the terms or conditions of section 2(f) or
12 regulations of the Commission; and

13 “(B) An agreement, contract, or trans-
14 action between eligible contract participants or
15 persons reasonably believed to be eligible con-
16 tract participants shall not be void, voidable, or
17 unenforceable, and a party thereto shall not be
18 entitled to rescind, or recover any payment
19 made with respect to, such an agreement, con-
20 tract, or transaction under this section or any
21 other provision of Federal or State law, based
22 solely on the failure of the agreement, contract,
23 or transaction to meet the definition of a swap
24 set forth in section 1a, be traded in the manner
25 set forth in section 2(k)(1), or be cleared pursu-

1 ant to 2(j)(1) or regulations of the Commission
2 pursuant thereto.”.

3 **SEC. 3117. FDICIA AMENDMENTS.**

4 Sections 408 and 409 of the Federal Deposit Insur-
5 ance Corporation Improvement Act of 1991 (12 U.S.C.
6 4421 and 4422) are repealed.

7 **SEC. 3118. ENFORCEMENT AUTHORITY.**

8 (a) The Commodity Exchange Act (7 U.S.C. 1 et
9 seq.) is amended by inserting after section 4b the fol-
10 lowing:

11 **“SEC. 4b–1. ENFORCEMENT AUTHORITY.**

12 “(a) CFTC.—Except as provided in subsection (b),
13 the Commission shall have exclusive authority to enforce
14 the provisions of subtitle A of the Derivative Markets
15 Transparency and Accountability Act of 2009 with respect
16 to any person.

17 “(b) PRUDENTIAL REGULATORS.—The Prudential
18 Regulators shall have exclusive authority to enforce the
19 provisions of section 4s(d) and other prudential require-
20 ments of this Act with respect to banks, and branches or
21 agencies of foreign banks that are swap dealers or major
22 swap participants.

23 “(c) REFERRAL.—(1) If the Prudential Regulator for
24 a swap dealer or major swap participant has cause to be-
25 lieve that the swap dealer or major swap participant may

1 have engaged in conduct that constitutes a violation of the
2 nonprudential requirements of section 4s or rules adopted
3 by the Commission thereunder, that Prudential Regulator
4 may recommend in writing to the Commission that the
5 Commission initiate an enforcement proceeding as author-
6 ized under this Act. The recommendation shall be accom-
7 panied by a written explanation of the concerns giving rise
8 to the recommendation.

9 “(2) If the Commission has cause to believe that a
10 swap dealer or major swap participant that has a Pruden-
11 tial Regulator may have engaged in conduct that con-
12 stitutes a violation of the prudential requirements of sec-
13 tion 4s or rules adopted thereunder, the Commission may
14 recommend in writing to the Prudential Regulator that
15 the Prudential Regulator initiate an enforcement pro-
16 ceeding as authorized under this Act. The recommenda-
17 tion shall be accompanied by a written explanation of the
18 concerns given rise to the recommendation.”.

19 (b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
20 amended by adding at the end the following:

21 “(3) DISRUPTIVE PRACTICES.—It shall be un-
22 lawful for any person to engage in any trading or
23 practice on or subject to the rules of a registered en-
24 tity that—

1 “(A) violates bids and offers (intentionally
2 bidding at a price higher than the lowest offer,
3 or offering at a price lower than the highest
4 bid);

5 “(B) is, is of the character of, or is com-
6 monly known to the trade as ‘marking the
7 close’ (bidding or offering during or near the
8 market’s closing period with the intent to influ-
9 ence the settlement price);

10 “(C) is, is of the character of, or is com-
11 monly known to the trade as ‘spoofing’ (bidding
12 or offering with the intent to cancel the bid or
13 offer before execution); or

14 “(D) constitutes uneconomic trading (trad-
15 ing that has no legitimate economic purpose but
16 for the effect on price).

17 “(4) The Commission may make and promul-
18 gate such rules and regulations as, in the judgment
19 of the Commission, are reasonably necessary to pro-
20 hibit any other trading practice that is disruptive of
21 fair and equitable trading.”.

22 (2) The amendment made by paragraph (1) shall be-
23 come effective upon enactment.

1 **SEC. 3119. ENFORCEMENT.**

2 (a) Section 4b(a)(2) of the Commodity Exchange Act
3 (7 U.S.C. 6b(a)(2)) is amended by striking “or other
4 agreement, contract, or transaction subject to paragraphs
5 (1) and (2) of section 5a(g),” and inserting “or swap,”.

6 (b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is
7 amended by striking “or other agreement, contract or
8 transaction subject to paragraphs (1) and (2) of section
9 5a(g),” and inserting “or swap,”.

10 (c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
11 amended by inserting “or swap” before “if the transaction
12 is used or may be used”.

13 (d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2))
14 is amended by inserting “or of any swap,” before “or to
15 corner”.

16 (e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4))
17 is amended by inserting “swap repository,” before “or fu-
18 tures association”.

19 (f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1))
20 is amended by inserting “swap repository,” before “or reg-
21 istered futures association” and by inserting “, or swaps,”
22 before “on the basis”.

23 (g) Section 8(b) of the Federal Deposit Insurance Act
24 (12 U.S.C. 1818(b)) is amended by redesignating para-
25 graphs (6) through (10) as paragraphs (7) through (11),

1 respectively, and inserting after paragraph (5) the fol-
2 lowing:

3 “(6) This section shall apply to any swap deal-
4 er, major swap participant, security-based swap
5 dealer, major security-based swap participant, de-
6 rivatives clearing organization, swap repository, se-
7 curity-based swap repository, or swap execution fa-
8 cility, whether or not it is an insured depository in-
9 stitution, for which the Board, the Corporation, or
10 the Office of the Comptroller of the Currency is the
11 appropriate Federal banking agency or Prudential
12 Regulator for purposes of the Derivative Markets
13 Transparency and Accountability Act of 2009.”.

14 **SEC. 3120. RETAIL COMMODITY TRANSACTIONS.**

15 (a) Section 2(c) of the Commodity Exchange Act (7
16 U.S.C. 2(c)) is amended—

17 (1) in paragraph (1), by striking “(other than
18 section 5a (to the extent provided in section 5a(g)),
19 5b, 5d, or 12(e)(2)(B))” and inserting “(other than
20 section 5b or 12(e)(2)(B))”; and

21 (2) in paragraph (2), by inserting after sub-
22 paragraph (C) the following:

23 “(D) RETAIL COMMODITY TRANS-
24 ACTIONS.—

1 “(i) This subparagraph shall apply to,
2 and the Commission shall have jurisdiction
3 over, any agreement, contract, or trans-
4 action in any commodity that is—

5 “(I) entered into with, or offered
6 to (even if not entered into with), a
7 person that is not an eligible contract
8 participant or eligible commercial en-
9 tity; and

10 “(II) entered into, or offered
11 (even if not entered into), on a lever-
12 aged or margined basis, or financed
13 by the offeror, the counterparty, or a
14 person acting in concert with the of-
15 feror or counterparty on a similar
16 basis.

17 “(ii) Clause (i) shall not apply to—

18 “(I) an agreement, contract, or
19 transaction described in paragraph (1)
20 or subparagraphs (A), (B), or (C), in-
21 cluding any agreement, contract, or
22 transaction specifically excluded from
23 subparagraph (A), (B), or (C);

24 “(II) any security;

25 “(III) a contract of sale that—

1 “(aa) results in actual deliv-
2 ery within 28 days or such other
3 longer period as the Commission
4 may determine by rule or regula-
5 tion based upon the typical com-
6 mercial practice in cash or spot
7 markets for the commodity in-
8 volved; or

9 “(bb) creates an enforceable
10 obligation to deliver between a
11 seller and a buyer that have the
12 ability to deliver and accept deliv-
13 ery, respectively, in connection
14 with their line of business.

15 “(IV) an agreement, contract, or
16 transaction that is listed on a national
17 securities exchange registered under
18 section 6(a) of the Securities Ex-
19 change Act of 1934 (15 U.S.C.
20 78f(a)); or

21 “(V) an identified banking prod-
22 uct, as defined in section 402(b) of
23 the Legal Certainty for Bank Prod-
24 ucts Act of 2000 (7 U.S.C. 27(b)).

1 “(iii) Sections 4(a), 4(b) and 4b shall
2 apply to any agreement, contract or trans-
3 action described in clause (i), that is not
4 excluded from clause (i) by clause (ii), as
5 if the agreement, contract, or transaction
6 were a contract of sale of a commodity for
7 future delivery.

8 “(iv) This subparagraph shall not be
9 construed to limit any jurisdiction that the
10 Commission may otherwise have under any
11 other provision of this Act over an agree-
12 ment, contract, or transaction that is a
13 contract of sale of a commodity for future
14 delivery;

15 “(v) This subparagraph shall not be
16 construed to limit any jurisdiction that the
17 Commission or the Securities and Ex-
18 change Commission may otherwise have
19 under any other provisions of this Act with
20 respect to security futures products and
21 persons effecting transactions in security
22 futures products;

23 “(vi) For the purposes of this sub-
24 paragraph, an agricultural producer, pack-
25 er, or handler shall be considered an eligi-

1 ble commercial entity for any agreement,
2 contract, or transaction for a commodity in
3 connection with its line of business.”.

4 (b) The amendments made by subsection (a) shall be-
5 come effective on the date of the enactment of this section.

6 **SEC. 3121. LARGE SWAP TRADER REPORTING.**

7 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
8 is amended by inserting after section 4s (as added by sec-
9 tion 3107 of this Act) the following:

10 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

11 “(a) It shall be unlawful for any person to enter into
12 any swap that performs or affects a significant price dis-
13 covery function with respect to registered entities if—

14 “(1) the person directly or indirectly enters into
15 such swaps during any 1 day in an amount equal to
16 or in excess of such amount as shall be fixed from
17 time to time by the Commission; and

18 “(2) such person directly or indirectly has or
19 obtains a position in such swaps equal to or in ex-
20 cess of such amount as shall be fixed from time to
21 time by the Commission,

22 unless the person files or causes to be filed with the prop-
23 erly designated officer of the Commission such reports re-
24 garding any transactions or positions described in para-
25 graphs (1) and (2) as the Commission may by rule or reg-

1 ulation require and unless, in accordance with the rules
2 and regulations of the Commission, the person keeps
3 books and records of all such swaps and any transactions
4 and positions in any related commodity traded on or sub-
5 ject to the rules of any board of trade, and of cash or
6 spot transactions in, inventories of, and purchase and sale
7 commitments of, such a commodity.

8 “(b) The books and records shall show complete de-
9 tails concerning all transactions and positions as the Com-
10 mission may by rule or regulation prescribe.

11 “(c) The books and records shall be open at all times
12 to inspection and examination by any representative of the
13 Commission.

14 “(d) For the purpose of this subsection, the swaps,
15 futures and cash or spot transactions and positions of any
16 person shall include the transactions and positions of any
17 persons directly or indirectly controlled by the person.

18 “(e) In making a determination whether a swap per-
19 forms or affects a significant price discovery function with
20 respect to regulated markets, the Commission shall con-
21 sider the factors set forth in section 4a(a)(3).”.

1 **SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLAT-**
2 **ERAL IN SWAP TRANSACTIONS.**

3 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
4 is further amended by inserting after section 4t the fol-
5 lowing:

6 **“SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN OVER-THE-COUNTER SWAP TRANS-**
8 **ACTIONS.**

9 “(a) SEGREGATION.—At the request of a swap
10 counterparty who provides funds or other property to a
11 swap dealer initial margin or collateral to secure the obli-
12 gations of the counterparty under a swap between the
13 counterparty and the swap dealer that is not submitted
14 for clearing to a derivatives clearing organization, the
15 swap dealer shall segregate the funds or other property
16 for the benefit of the counterparty, and maintain the ini-
17 tial margin or collateral in an account which is carried
18 by an independent third-party custodian and designated
19 as a segregated account for the counterparty, in accord-
20 ance with such rules and regulations as the Commission
21 or Prudential Regulator may prescribe. If a swap
22 counterparty is a swap dealer or major swap participant
23 who owns more than 20 percent of, or has more than 50
24 percent representation on the board of directors of a cus-
25 todian, the custodian shall not be considered independent
26 from the swap counterparties for purposes of the pre-

1 ceding sentence. This subsection shall not be interpreted
2 to preclude commercial arrangements regarding the in-
3 vestment of the segregated funds or other property and
4 the related allocation of gains and losses resulting from
5 any such investment.

6 “(b) FURTHER AUDIT REPORTING.—If a swap dealer
7 does not segregate funds pursuant to the request of a
8 swap counterparty in accordance with subsection (a), the
9 swap dealer shall report to its counterparty on a quarterly
10 basis that its procedures relating to margin and collateral
11 requirements are in compliance with the agreement of the
12 counterparties.”.

13 **SEC. 3123. OTHER AUTHORITY.**

14 Unless otherwise provided by its terms, this subtitle
15 does not divest any appropriate Federal banking agency,
16 the Commission, the Securities and Exchange Commis-
17 sion, or other Federal or State agency, of any authority
18 derived from any other applicable law.

19 **SEC. 3124. ANTITRUST.**

20 Nothing in the amendments made by this subtitle
21 shall be construed to modify, impair, or supersede the op-
22 eration of any of the antitrust laws. For purposes of this
23 subtitle, the term “antitrust laws” has the same meaning
24 given the term in subsection (a) of the first section of the
25 Clayton Act, except that the term includes section 5 of

1 the Federal Trade Commission Act to the extent that such
2 section 5 applies to unfair methods of competition.

3 **SEC. 3125. REVIEW OF PRIOR ACTIONS.**

4 Notwithstanding any other provision of the Com-
5modity Exchange Act, the Commodity Futures Trading
6 Commission shall review, as appropriate, all regulations,
7 rules, exemptions, exclusions, guidance, no action letters,
8 orders, other actions taken by or on behalf of the Commis-
9 sion, and any action taken pursuant to the Commodity
10 Exchange Act by an exchange, self-regulatory organiza-
11 tion, or any other registered entity, that are currently in
12 effect, to ensure that such prior actions are in compliance
13 with the provisions of this title.

14 **SEC. 3126. EXPEDITED PROCESS.**

15 The Commodity Futures Trading Commission may
16 use emergency and expedited procedures (including any
17 administrative or other procedure as appropriate) to carry
18 out this title if, in its discretion, it deems it necessary to
19 do so.

20 **SEC. 3127. EFFECTIVE DATE.**

21 (a) Unless otherwise provided, the provisions of this
22 subtitle shall become effective the later of 270 days after
23 the date of the enactment of this subtitle or, to the extent
24 a provision of this subtitle requires rulemaking, no less

1 than 60 days after publication of a final rule or regulation
 2 implementing such provision of this subtitle.

3 (b) Subsection (a) shall not preclude the Commodity
 4 Futures Trading Commission from any rulemaking re-
 5 quired or directed under this subtitle to implement the
 6 provisions of this subtitle.

7 **Subtitle B—Regulation of Security-** 8 **Based Swap Markets**

9 **SEC. 3201. DEFINITIONS UNDER THE SECURITIES EX-** 10 **CHANGE ACT OF 1934.**

11 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
 12 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

13 (1) in paragraph (5)(A) and (B), by inserting
 14 “(but not security-based swaps, other than security-
 15 based swaps with or for persons that are not eligible
 16 contract participants)” after the word “securities”
 17 in each place it appears;

18 (2) in paragraph (10), by inserting “security-
 19 based swap,” after “security future,”;

20 (3) in paragraph (13), by adding at the end the
 21 following: “For security-based swaps, such terms in-
 22 clude the execution, termination (prior to its sched-
 23 uled maturity date), assignment, exchange, or simi-
 24 lar transfer or conveyance of, or extinguishing of

1 rights or obligations under, a security-based swap,
2 as the context may require.”;

3 (4) in paragraph (14), by adding at the end the
4 following: “For security-based swaps, such terms in-
5 clude the execution, termination (prior to its sched-
6 uled maturity date), assignment, exchange, or simi-
7 lar transfer or conveyance of, or extinguishing of
8 rights or obligations under, a security-based swap,
9 as the context may require.”;

10 (5) in paragraph (39)—

11 (A) by striking “or government securities
12 dealer” and adding “government securities
13 dealer, security-based swap dealer or major se-
14 curity-based swap participant” in its place in
15 subparagraph (B)(i)(I);

16 (B) by adding “security-based swap dealer,
17 major security-based swap participant,” after
18 “government securities dealer,” in subpara-
19 graph (B)(i)(II);

20 (C) by striking “or government securities
21 dealer” and adding “government securities
22 dealer, security-based swap dealer or major se-
23 curity-based swap participant” in its place in
24 subparagraph (C); and

1 (D) by adding “security-based swap dealer,
2 major security-based swap participant,” after
3 “government securities dealer,” in subpara-
4 graph (D); and

5 (6) by adding at the end the following:

6 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The
7 term ‘eligible contract participant’ has the same
8 meaning as in section 1a(12) of the Commodity Ex-
9 change Act (7 U.S.C. 1a(12)).

10 “(66) MAJOR SWAP PARTICIPANT.—The term
11 ‘major swap participant’ has the same meaning as in
12 section 1a(39) of the Commodity Exchange Act (7
13 U.S.C. 1a(39)).

14 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
15 PANT.—

16 “(A) IN GENERAL.—The term ‘major secu-
17 rity-based swap participant’ means any person
18 who is not a security-based swap dealer, and—

19 “(i) maintains a substantial net posi-
20 tion in outstanding security-based swaps,
21 excluding positions held primarily for hedg-
22 ing, reducing or otherwise mitigating its
23 commercial risk, including operating and
24 balance sheet risk; or

1 “(ii) whose outstanding security-based
2 swaps create substantial net counterparty
3 exposure among the aggregate of its
4 counterparties that could expose those
5 counterparties to significant credit losses.

6 “(B) DEFINITION OF ‘SUBSTANTIAL NET
7 POSITION’.—The Commission shall define by
8 rule or regulation the terms ‘substantial net po-
9 sition’, ‘substantial net counterparty exposure’,
10 and ‘significant credit losses’ at thresholds that
11 the Commission determines prudent for the ef-
12 fective monitoring, management and oversight
13 of entities which are systemically important or
14 can significantly impact the financial system
15 through counterparty credit risk. In setting the
16 definitions, the Commission shall consider the
17 person’s relative position in uncleared as op-
18 posed to cleared swaps.

19 “(C) A person may be designated a major
20 security-based swap participant for 1 or more
21 individual types of security-based swaps without
22 being classified as a major security-based swap
23 participant for all classes of security-based
24 swaps.

25 “(68) SECURITY-BASED SWAP.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘security-based
3 swap’ means any agreement, contract, or trans-
4 action that would be a swap under section
5 1a(35) of the Commodity Exchange Act, and
6 that—

7 “(i) is primarily based on an index
8 that is a narrow-based security index, in-
9 cluding any interest therein or based on
10 the value thereof;

11 “(ii) is primarily based on a single se-
12 curity or loan, including any interest there-
13 in or based on the value thereof; or

14 “(iii) is primarily based on the occur-
15 rence, non-occurrence, or extent of the oc-
16 currence of an event relating to a single
17 issuer of a security or the issuers of securi-
18 ties in a narrow-based security index, pro-
19 vided that such event must directly affect
20 the financial statements, financial condi-
21 tion, or financial obligations of the issuer.

22 “(B) RULE OF CONSTRUCTION REGARDING
23 MASTER AGREEMENTS.—The term ‘security-
24 based swap’ shall be construed to include a
25 master agreement that provides for an agree-

1 ment, contract, or transaction that is a secu-
2 rity-based swap pursuant to subparagraph (A),
3 together with all supplements to any such mas-
4 ter agreement, without regard to whether the
5 master agreement contains an agreement, con-
6 tract, or transaction that is not a security-based
7 swap pursuant to subparagraph (A), except
8 that the master agreement shall be considered
9 to be a security-based swap only with respect to
10 each agreement, contract, or transaction under
11 the master agreement that is a security-based
12 swap pursuant to subparagraph (A).

13 “(C) EXCLUSION.—The term ‘security-
14 based swap’ does not include any agreement,
15 contract, or transaction that meets the defini-
16 tion of a security-based swap only because it
17 references, is based upon, or settles through the
18 transfer, delivery, or receipt of an exempted se-
19 curity under section 3(a)(12) of the Securities
20 Exchange Act of 1934 as in effect on the date
21 of enactment of the Futures Trading Act of
22 1982 (other than any municipal security as de-
23 fined in section 3(a)(29) as in effect on the date
24 of enactment of the Futures Trading Act of
25 1982), unless such agreement, contract, or

1 transaction is of the character of, or is com-
2 monly known in the trade as, a put, call, or
3 other option.

4 “(69) SWAP.—The term ‘swap’ has the same
5 meaning as in section 1a(35) of the Commodity Ex-
6 change Act (7 U.S.C. 1a(35)).

7 “(70) PERSON ASSOCIATED WITH A SECURITY-
8 BASED SWAP DEALER OR MAJOR SECURITY-BASED
9 SWAP PARTICIPANT.—The term ‘person associated
10 with a security-based swap dealer or major security-
11 based swap participant’ or ‘associated person of a
12 security-based swap dealer or major security-based
13 swap participant’ means any partner, officer, direc-
14 tor, or branch manager of such security-based swap
15 dealer or major security-based swap participant (or
16 any person occupying a similar status or performing
17 similar functions), any person directly or indirectly
18 controlling, controlled by, or under common control
19 with such security-based swap dealer or major secu-
20 rity-based swap participant, or any employee of such
21 security-based swap dealer or major security-based
22 swap participant, except that any person associated
23 with a security-based swap dealer or major security-
24 based swap participant whose functions are solely
25 clerical or ministerial shall not be included in the

1 meaning of such term other than for purposes of
2 section 15F(e)(2).

3 “(71) SECURITY-BASED SWAP DEALER.—

4 “(A) IN GENERAL.—The term ‘security-
5 based swap dealer’ means any person that—

6 “(i) holds itself out as a dealer in se-
7 curity-based swaps;

8 “(ii) makes a market in security-based
9 swaps;

10 “(iii) regularly engages in the pur-
11 chase of security-based swaps and their re-
12 sale to customers in the ordinary course of
13 a business; or

14 “(iv) engages in any activity causing
15 it to be commonly known in the trade as
16 a dealer or market maker in security-based
17 swaps.

18 “(B) DESIGNATION BY TYPE OR CLASS.—

19 A person may be designated a security-based
20 swap dealer for a single type or single class or
21 category of security-based swap and considered
22 not a security-based swap dealer for other
23 types, classes, or categories of security-based
24 swaps.

1 “(C) DE MINIMUS EXCEPTION.—The Com-
2 mission shall make a determination to exempt
3 from designation as a security-based swap deal-
4 er an entity that engages in a de minimus
5 amount of security-based swap dealing in con-
6 nection with transactions with or on the behalf
7 of its customers.

8 “(72) APPROPRIATE FEDERAL BANKING AGEN-
9 CY.—The term ‘appropriate Federal banking agency’
10 has the same meaning as in section 3(q) of the Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

12 “(73) BOARD.—The term ‘Board’ means the
13 Board of Governors of the Federal Reserve System.

14 “(74) PRUDENTIAL REGULATOR.—The term
15 ‘Prudential Regulator’ means—

16 “(A) the Board in the case of a swap deal-
17 er, major swap participant, security-based swap
18 dealer or major security-based swap participant
19 that is—

20 “(i) a State-chartered bank that is a
21 member of the Federal Reserve System; or

22 “(ii) a State-chartered branch or
23 agency of a foreign bank;

24 “(B) the Office of the Comptroller of the
25 Currency in the case of a swap dealer, major

1 swap participant, security-based swap dealer or
2 major security-based swap participant that is—

3 “(i) a national bank; or

4 “(ii) a federally chartered branch or
5 agency of a foreign bank; and

6 “(C) the Federal Deposit Insurance Cor-
7 poration in the case of a swap dealer, major
8 swap participant, security-based swap dealer or
9 major security-based swap participant that is a
10 state-chartered bank that is not a member of
11 the Federal Reserve System.

12 “(75) SWAP DEALER.—The term ‘swap dealer’
13 has the same meaning as in section 1a(38) of the
14 Commodity Exchange Act (7 U.S.C. 1a(38)).

15 “(76) SECURITY-BASED SWAP AGREEMENT.—

16 “(A) IN GENERAL.—For purposes of sec-
17 tions 10, 16, 20, and 21A of this Act, and sec-
18 tion 17 of the Securities Act of 1933 (15
19 U.S.C. 77q), the term ‘security-based swap
20 agreement’ means a swap agreement as defined
21 in section 206A of the Gramm-Leach-Bliley Act
22 (15 U.S.C. 78c note) of which a material term
23 is based on the price, yield, value, or volatility
24 of any security or any group or index of securi-
25 ties, or any interest therein.

1 “(B) EXCLUSIONS.—The term ‘security-
2 based swap agreement’ does not include any se-
3 curity-based swap.

4 “(76) SECURITY-BASED SWAP REPOSITORY.—
5 The term ‘security-based swap repository’ means any
6 person that collects, calculates, prepares or main-
7 tains information or records with respect to trans-
8 actions or positions in, or the terms and conditions
9 of, security-based swaps entered into by third par-
10 ties.

11 “(77) SWAP EXECUTION FACILITY.—The term
12 ‘swap execution facility’ means a person or entity
13 that facilitates the execution or trading of security-
14 based swaps between two persons through any
15 means of interstate commerce, but which is not a
16 national securities exchange, including any electronic
17 trade execution or voice brokerage facility.”.

18 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
19 Securities and Exchange Commission may adopt a rule
20 further defining the terms “security-based swap”, “secu-
21 rity-based swap dealer”, “major security-based swap par-
22 ticipant”, and “eligible contract participant” with regard
23 to security-based swaps (as such terms are defined in the
24 amendments made by subsection (a)) for the purpose of

1 including transactions and entities that have been struc-
2 tured to evade this title.

3 **SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF**
4 **SECURITY-BASED SWAPS.**

5 (a) REPEAL OF LAW.—Section 206B of the Gramm-
6 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

7 (b) CONFORMING AMENDMENTS TO THE SECURITIES
8 ACT OF 1933.—

9 (1) Section 2A(b) of the Securities Act of 1933
10 (15 U.S.C. 77b–1) is amended by striking “(as de-
11 fined in section 206B of the Gramm-Leach-Bliley
12 Act)” each place that such term appears.

13 (2) Section 17 of the Securities Act of 1933 (15
14 U.S.C. 77q) is amended—

15 (A) in subsection (a)—

16 (i) by inserting “(including security-
17 based swaps)” after “securities”; and

18 (ii) by striking “206B of the Gramm-
19 Leach-Bliley Act” and inserting “3(a)(76)
20 of the Securities Exchange Act of 1934”;
21 and

22 (B) in subsection (d), by striking “206B of
23 the Gramm-Leach-Bliley Act” and inserting
24 “3(a)(76) of the Securities Exchange Act of
25 1934”.

1 (c) CONFORMING AMENDMENTS TO THE SECURITIES
2 EXCHANGE ACT OF 1934.—The Securities Exchange Act
3 of 1934 (15 U.S.C. 78a et seq.) is amended as follows:

4 (1) Section 3A (15 U.S.C. 78c–1) is amended
5 by striking “(as defined in section 206B of the
6 Gramm-Leach-Bliley Act)” each place that the term
7 appears.

8 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended
9 by striking paragraphs (2) through (5) and insert-
10 ing:

11 “(2) To effect, alone or with one or more other per-
12 sons, a series of transactions in any security registered
13 on a national securities exchange or in connection with
14 any security-based swap or security-based swap agreement
15 with respect to such security creating actual or apparent
16 active trading in such security, or raising or depressing
17 the price of such security, for the purpose of inducing the
18 purchase or sale of such security by others.

19 “(3) If a dealer, broker, security-based swap dealer,
20 major security-based swap participant or other person sell-
21 ing or offering for sale or purchasing or offering to pur-
22 chase the security, or a security-based swap or security-
23 based swap agreement with respect to such security, to
24 induce the purchase or sale of any security registered on
25 a national securities exchange or any security-based swap

1 or security-based swap agreement with respect to such se-
2 curity by the circulation or dissemination in the ordinary
3 course of business of information to the effect that the
4 price of any such security will or is likely to rise or fall
5 because of market operations of any one or more persons
6 conducted for the purpose of raising or depressing the
7 price of such security.

8 “(4) If a dealer, broker, security-based swap dealer,
9 major security-based swap participant or other person sell-
10 ing or offering for sale or purchasing or offering to pur-
11 chase the security, or a security-based swap or security-
12 based swap agreement with respect to such security, to
13 make, regarding any security registered on a national se-
14 curities exchange or any security-based swap or security-
15 based swap agreement with respect to such security, for
16 the purpose of inducing the purchase or sale of such secu-
17 rity or such security-based swap or security-based swap
18 agreement, any statement which was at the time and in
19 the light of the circumstances under which it was made,
20 false or misleading with respect to any material fact, and
21 which he knew or had reasonable ground to believe was
22 so false or misleading.

23 “(5) For a consideration, received directly or indi-
24 rectly from a dealer, broker, security-based swap dealer,
25 major security-based swap participant or other person sell-

1 ing or offering for sale or purchasing or offering to pur-
2 chase the security, or a security-based swap or security-
3 based swap agreement with respect to such security, to
4 induce the purchase of any security registered on a na-
5 tional securities exchange or any security-based swap or
6 security-based swap agreement with respect to such secu-
7 rity by the circulation or dissemination of information to
8 the effect that the price of any such security will or is
9 likely to rise or fall because of the market operations of
10 any one or more persons conducted for the purpose of rais-
11 ing or depressing the price of such security.”.

12 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended
13 by striking “(as defined in section 206B of the
14 Gramm-Leach-Bliley Act)”;

15 (4) Section 10 (15 U.S.C. 78j) is amended by
16 striking “(as defined in section 206B of the Gramm-
17 Leach-Bliley Act)” each place that the term appears.

18 (5) Section 15(c)(1) is amended—

19 (A) in subparagraph (A), by striking “, or
20 any security-based swap agreement (as defined
21 in section 206B of the Gramm-Leach-Bliley
22 Act),”; and

23 (B) in subparagraphs (B) and (C), by
24 striking “agreement (as defined in section 206B

1 of the Gramm-Leach-Bliley Act)” in each place
2 that the term appears.

3 (6) Section 15(i) (15 U.S.C. 78o(i), as added
4 by section 303(f) of the Commodity Futures Mod-
5 ernization Act of 2000 (Public Law 106–554; 114
6 Stat. 2763A–455) is amended by striking “(as de-
7 fined in section 206B of the Gramm-Leach-Bliley
8 Act)”.

9 (7) Section 16 (15 U.S.C. 78p) is amended—

10 (A) in subsection (a)(2)(C), by striking
11 “(as defined in section 206(b) of the Gramm-
12 Leach-Bliley Act (15 U.S.C. 78c note))”;

13 (B) in subsection (b), by striking “(as de-
14 fined in section 206B of the Gramm-Leach-Bli-
15 ley Act)” in each place that the term appears;
16 and

17 (C) in subsection (g), by striking “(as de-
18 fined in section 206B of the Gramm-Leach-Bli-
19 ley Act)”;

20 (8) Section 20 (15 U.S.C. 78t) is amended—

21 (A) in subsection (d), by striking “(as de-
22 fined in section 206B of the Gramm-Leach-Bli-
23 ley Act)”;

1 (B) in subsection (f), by striking “(as de-
 2 fined in section 206B of the Gramm-Leach-Bli-
 3 ley Act)”; and

4 (9) Section 21A (15 U.S.C. 78u–1) is amend-
 5 ed—

6 (A) in subsection (a)(1), by striking “(as
 7 defined in section 206B of the Gramm-Leach-
 8 Bliley Act)”; and

9 (B) in subsection (g), by striking “(as de-
 10 fined in section 206B of the Gramm-Leach-Bli-
 11 ley Act)”.

12 **SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE**
 13 **ACT OF 1934.**

14 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
 15 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
 16 is amended by adding the following section after section
 17 3A:

18 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

19 **“(a) IN GENERAL.—**

20 **“(1) STANDARD FOR CLEARING.—**A security-
 21 based swap shall be submitted for clearing if a clear-
 22 ing agency that is registered under this Act will ac-
 23 cept the security-based swap for clearing, and the
 24 Commission has determined under paragraph

1 (2)(B)(ii) of subsection (b) that the security-based
2 swap is required to be cleared.

3 “(2) OPEN ACCESS.—The rules of a clearing
4 agency described in paragraph (1) shall—

5 “(A) prescribe that all security-based
6 swaps submitted to the clearing agency with the
7 same terms and conditions are economically
8 equivalent within the clearing agency and may
9 be offset with each other within the clearing
10 agency; and

11 “(B) provide for non-discriminatory clear-
12 ing of a security-based swap executed bilaterally
13 or on or through the rules of an unaffiliated na-
14 tional securities exchange or swap execution fa-
15 cility.

16 “(b) COMMISSION REVIEW.—

17 “(1) COMMISSION-INITIATED REVIEW.—

18 “(A) The Commission shall review each se-
19 curity-based swap, or any group, category, type
20 or class of security-based swaps to make a de-
21 termination that such security-based swap, or
22 group, category, type or class of security-based
23 swaps should be required to be cleared.

1 “(B) The Commission shall provide at
2 least a 30-day public comment period regarding
3 any determination under subparagraph (A).

4 “(2) SWAP SUBMISSIONS.—

5 “(A) A clearing agency shall submit to the
6 Commission each security-based swap, or any
7 group, category, type or class of security-based
8 swaps that it plans to accept for clearing and
9 provide notice to its members (in a manner to
10 be determined by the Commission) of such sub-
11 mission.

12 “(B) The Commission shall—

13 “(i) make available to the public any
14 submission received under subparagraph
15 (A);

16 “(ii) review each submission made
17 under subparagraph (A), and determine
18 whether the security-based swap, or group,
19 category, type, or class of security-based
20 swaps, described in the submission is re-
21 quired to be cleared; and

22 “(iii) provide at least a 30-day public
23 comment period regarding its determina-
24 tion whether the clearing requirement

1 under subsection (a)(1) shall apply to the
2 submission.

3 “(3) DEADLINE.—The Commission shall make
4 its determination under paragraph (2)(B) not later
5 than 90 days after receiving a submission made
6 under paragraph (2)(A), unless the submitting clear-
7 ing agency agrees to an extension for the time limi-
8 tation established under this paragraph.

9 “(4) DETERMINATION.—

10 “(A) In reviewing a submission made
11 under paragraph (2), the Commission shall re-
12 view whether the submission is consistent with
13 section 5b(c)(2).

14 “(B) In reviewing a security-based swap,
15 group of security-based swaps or class of secu-
16 rity-based swaps pursuant to paragraph (1) or
17 a submission made under paragraph (2), the
18 Commission shall take into account the fol-
19 lowing factors:

20 “(i) The existence of significant out-
21 standing notional exposures, trading liquid-
22 ity and adequate pricing data.

23 “(ii) The availability of rule frame-
24 work, capacity, operational expertise and
25 resources, and credit support infrastruc-

1 ture to clear the contract on terms that are
2 consistent with the material terms and
3 trading conventions on which the contract
4 is then traded.

5 “(iii) The effect on the mitigation of
6 systemic risk, taking into account the size
7 of the market for such contract and the re-
8 sources of the clearing agency available to
9 clear the contract.

10 “(iv) The effect on competition, in-
11 cluding appropriate fees and charges ap-
12 plied to clearing.

13 “(v) The existence of reasonable legal
14 certainty in the event of the insolvency of
15 the relevant clearing agency or 1 or more
16 of its clearing members with regard to the
17 treatment of customer and security-based
18 swap counterparty positions, funds, and
19 property.

20 “(C) In making a determination under
21 paragraph (2)(B) that the clearing requirement
22 shall apply, the Commission may require such
23 terms and conditions to the requirement as the
24 Commission determines to be appropriate.

1 “(5) RULES.—Not later than 1 year after the
2 date of the enactment of the Derivative Markets
3 Transparency and Accountability Act of 2009, the
4 Commission shall adopt rules for a clearing agency’s
5 submission for review, pursuant to this subsection,
6 of a security-based swap, or a group, category, type
7 or class of security-based swaps, that it seeks to ac-
8 cept for clearing.

9 “(c) STAY OF CLEARING REQUIREMENT.—

10 “(1) After an determination pursuant to sub-
11 section (b)(2), the Commission, on application of a
12 counterparty to a security-based swap or on its own
13 initiative, may stay the clearing requirement of sub-
14 section (a)(1) until the Commission completes a re-
15 view of the terms of the security-based swap (or the
16 group, category, type or class of security-based
17 swaps) and the clearing arrangement.

18 “(2) DEADLINE.—The Commission shall com-
19 plete a review undertaken pursuant to paragraph (1)
20 not later than 90 days after issuance of the stay, un-
21 less the clearing agency that clears the security-
22 based swap, or group, category, type or class of se-
23 curity-based swaps, agrees to an extension of the
24 time limitation established under this paragraph.

1 “(3) DETERMINATION.—Upon completion of
2 the review undertaken pursuant to paragraph (1),
3 the Commission may—

4 “(A) determine, unconditionally or subject
5 to such terms and conditions as the Commis-
6 sion determines to be appropriate, that the se-
7 curity-based swap, or group, category, type or
8 class of security-based swaps, must be cleared
9 pursuant to this subsection if it finds that such
10 clearing is consistent with subsection (b)(4); or

11 “(B) determine that the clearing require-
12 ment of subsection (a)(1) shall not apply to the
13 security-based swap, or group, category, type or
14 class of security-based swaps.

15 “(4) RULES.—Not later than 1 year after the
16 date of the enactment of the Derivative Markets
17 Transparency and Accountability Act of 2009, the
18 Commission shall adopt rules for reviewing, pursu-
19 ant to this subsection, a clearing agency’s clearing of
20 a security-based swap, or a group, category, type or
21 class of security-based swaps, that it has accepted
22 for clearing.

23 “(d) PREVENTION OF EVASION.—The Commission
24 may prescribe rules under this subsection, or issue inter-

1 pretations of the rules, as necessary to prevent evasions
2 of this section.

3 “(e) REQUIRED REPORTING.—

4 “(1) IN GENERAL.—All security-based swaps
5 that are not accepted for clearing by any clearing
6 agency shall be reported either to a security-based
7 swap repository described in subsection 13(n) or, if
8 there is no security-based swap repository that
9 would accept the security-based swap, to the Com-
10 mission pursuant to section 13A within such time
11 period as the Commission may by rule or regulation
12 prescribe. Counterparties to a security-based swap
13 may agree which counterparty will report the secu-
14 rity-based swap as required by this paragraph.

15 “(2) SWAP DEALER DESIGNATION.—With re-
16 gard to security-based swaps where only 1
17 counterparty is a security-based swap dealer, the se-
18 curity-based swap dealer shall report the security-
19 based swap as required by this subsection.

20 “(f) REPORTING TRANSITION RULES.—Rules adopt-
21 ed by the Commission under this section shall provide for
22 the reporting of data, as follows:

23 “(1) Security-based swaps entered into before
24 the date of the enactment of this section shall be re-
25 ported to a registered security-based swap repository

1 or the Commission no later than 180 days after the
2 effective date of this section; and

3 “(2) Security-based swaps entered into on or
4 after such date of enactment shall be reported to a
5 registered security-based swap repository or the
6 Commission no later than the later of—

7 “(A) 90 days after such effective date; or

8 “(B) such other time after entering into
9 the security-based swap as the Commission may
10 prescribe by rule or regulation.

11 “(g) CLEARING TRANSITION RULES.—

12 “(1) Security-based swaps entered into before
13 the date of the enactment of this section are exempt
14 from the clearing requirements of this subsection if
15 reported pursuant to subsection (f)(1).

16 “(2) Security-based swaps entered into before
17 application of the clearing requirement pursuant to
18 this section are exempt from the clearing require-
19 ments of this section if reported pursuant to sub-
20 section (f)(2).

21 “(h) EXCEPTIONS.—

22 “(1) IN GENERAL.—The requirements of sub-
23 section (a)(1) shall not apply to a security-based
24 swap if one of the counterparties to the security-
25 based swap—

1 “(A) is not a security-based swap dealer or
2 major security-based swap participant;

3 “(B) is using security-based swaps to
4 hedge or mitigate commercial risk, including
5 operating or balance sheet risk; and

6 “(C) notifies the Commission, in a manner
7 set forth by the Commission, how it generally
8 meets its financial obligations associated with
9 entering into non-cleared security-based swaps.

10 “(2) ABUSE OF EXCEPTION.—The Commission
11 may prescribe rules under this subsection, or issue
12 interpretations of the rules, as necessary to prevent
13 abuse of the exemption in paragraph (1) by security-
14 based swap dealers and major security-based swap
15 participants.

16 “(3) OPTION TO CLEAR.—The application of
17 the clearing exception in paragraph (1) is solely at
18 the discretion the counterparty to the swap that
19 meets the conditions of subparagraphs (A) through
20 (C) of paragraph (1).”.

21 (b) CLEARING AGENCY REQUIREMENTS.—Section
22 17A of the Securities Exchange Act of 1934 (15 U.S.C.
23 78q) is amended by adding at the end the following new
24 subsections:

1 “(g) REGISTRATION REQUIREMENT.—It shall be un-
2 lawful for a clearing agency, unless registered with the
3 Commission, directly or indirectly to make use of the mails
4 or any means or instrumentality of interstate commerce
5 to perform the functions of a clearing agency with respect
6 to a swap.

7 “(h) VOLUNTARY REGISTRATION.—A person that
8 clears agreements, contracts, or transactions that are not
9 required to be cleared under this Act may register with
10 the Commission as a clearing agency.

11 “(i) EXISTING BANKS AND DERIVATIVES CLEARING
12 ORGANIZATIONS.—A bank or a derivatives clearing orga-
13 nization registered with the Commodity Futures Trading
14 Commission under the Commodity Exchange Act required
15 to be a registered as a clearing agency under this title,
16 solely because it clears security-based swaps, is deemed to
17 be a registered clearing agency under this title solely for
18 the purpose of clearing security-based swaps to the extent
19 that the bank cleared security-based swaps, as defined in
20 this Act, as a multilateral clearing organization or the de-
21 rivatives clearing organization cleared security-based
22 swaps, as defined in this title pursuant to an exemption
23 from registration as a clearing agency, before the enact-
24 ment of this section. A bank or derivative clearing organi-
25 zation to which this subsection applies shall continue to

1 comply with the requirements in section 17A(b)(3) of this
2 title. A bank to which this subsection applies may, by the
3 vote of the shareholders owning not less than 51 percent
4 of the voting interests of such bank, be converted into a
5 State corporation, partnership, limited liability company,
6 or other similar legal form pursuant to a plan of conver-
7 sion, if the conversion is not in contravention of applicable
8 State law.

9 “(j) REPORTING.—

10 “(1) IN GENERAL.—A clearing agency that
11 clears security-based swaps shall provide to the
12 Commission all information determined by the Com-
13 mission to be necessary to perform its responsibil-
14 ities under this Act. The Commission shall adopt
15 data collection and maintenance requirements for se-
16 curity-based swaps cleared by clearing agencies that
17 are comparable to the corresponding requirements
18 for security-based swaps accepted by security-based
19 swap repositories and security-based swaps traded
20 on swap execution facilities. Subject to section 24,
21 the Commission shall share such information, upon
22 request, with the Board, the Commodity Futures
23 Trading Commission, the appropriate Federal bank-
24 ing agencies, the Financial Services Oversight Coun-
25 cil, and the Department of Justice or to other per-

1 sons the Commission deems appropriate, including
2 foreign financial supervisors (including foreign fu-
3 tures authorities), foreign central banks, and foreign
4 ministries.

5 “(2) PUBLIC INFORMATION.—A clearing agency
6 that clears security-based swaps shall provide to the
7 Commission, or its designee, such information as is
8 required by, and in a form and at a frequency to be
9 determined by, the Commission, in order to comply
10 with the public reporting requirements contained in
11 section 13.

12 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

13 “(1) IN GENERAL.—Each clearing agency that
14 clears security-based swaps shall designate an indi-
15 vidual to serve as a compliance officer.

16 “(2) DUTIES.—The compliance officer shall—

17 “(A) report directly to the board or to the
18 senior officer of the clearing agency;

19 “(B) in consultation with the board of the
20 clearing agency, a body performing a function
21 similar to that of a board, or the senior officer
22 of the clearing agency, resolve any conflicts of
23 interest that may arise;

1 “(C) be responsible for administering the
2 policies and procedures required to be estab-
3 lished pursuant to this section;

4 “(D) ensure compliance with securities
5 laws and the rules and regulations issued there-
6 under, including rules prescribed by the Com-
7 mission pursuant to this section; and

8 “(E) establish procedures for remediation
9 of non-compliance issues found during compli-
10 ance office reviews, lookbacks, internal or exter-
11 nal audit findings, self-reported errors, or
12 through validated complaints. Procedures will
13 establish the handling, management response,
14 remediation, re-testing, and closing of non-com-
15 pliant issues.

16 “(3) ANNUAL REPORTS REQUIRED.—The com-
17 pliance officer shall annually prepare and sign a re-
18 port on the compliance of the clearing agency with
19 the securities laws and its policies and procedures,
20 including its code of ethics and conflict of interest
21 policies, in accordance with rules prescribed by the
22 Commission. Such compliance report shall accom-
23 pany the financial reports of the clearing agency
24 that are required to be furnished to the Commission
25 pursuant to this section and shall include a certifi-

1 cation that, under penalty of law, the report is accu-
2 rate and complete.

3 “(l) STANDARDS FOR CLEARING AGENCIES CLEAR-
4 ING SWAP TRANSACTIONS.—To be registered and to main-
5 tain registration as a clearing agency that clears swap
6 transactions, a clearing agency shall comply with such
7 standards as the Commission may establish by rule. In
8 establishing any such standards, and in the exercise of its
9 oversight of such a clearing agency pursuant to this title,
10 the Commission may conform such standards or oversight
11 to reflect evolving United States and international stand-
12 ards. Except where the Commission determines otherwise
13 by rule or regulation, a clearing agency shall have reason-
14 able discretion in establishing the manner in which it com-
15 plies with any such standards.

16 “(m) RULES.—Not later than 1 year after the date
17 of the enactment of the Derivative Markets Transparency
18 and Accountability Act of 2009, the Commission shall
19 adopt rules governing persons that are registered as clear-
20 ing agencies for security-based swaps under this Act.

21 “(n) EXEMPTIONS.—

22 “(1) IN GENERAL.—The Commission may ex-
23 empt, conditionally or unconditionally, a clearing
24 agency from registration under this section for the
25 clearing of security-based swaps if the Commission

1 finds that such clearing agency is subject to com-
2 parable, comprehensive supervision and regulation
3 on a consolidated basis by the Commodity Futures
4 Trading Commission, a Prudential Regulator, or the
5 appropriate governmental authorities in the organi-
6 zation's home country or if necessary or appropriate
7 in the public interest and consistent with the pur-
8 pose of this Act.

9 “(2) A person that is required to be registered
10 as clearing agency under this section, whose prin-
11 cipal business is clearing commodity futures and op-
12 tions on commodity futures transactions and which
13 is a derivatives clearing organization registered with
14 the Commodity Futures Trading Commission under
15 the Commodity Exchange Act (7 U.S.C. 1 et seq.),
16 shall be unconditionally exempt from registration
17 under this section solely for the purpose of clearing
18 security-based swaps, unless the Commission finds
19 that such derivatives clearing organization is not
20 subject to comparable, comprehensive supervision
21 and regulation by the Commodity Futures Trading
22 Commission.”.

23 (c) EXECUTION OF SECURITY-BASED SWAPS.—The
24 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
25 is amended by inserting after section 5 the following:

1 **“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**

2 “(a) EXECUTION TRANSPARENCY.—

3 “(1) REQUIREMENT.—A security-based swap
4 that is subject to the clearing requirement of section
5 3B shall not be traded except on or through a na-
6 tional securities exchange or on or through an swap
7 execution facility registered under section 5h, that
8 makes the security-based swap available for trading.

9 “(2) EXCEPTIONS.—The requirement of para-
10 graph (1) shall not apply to a security-based swap
11 if no national securities exchange or swap execution
12 facility makes the security-based swap available for
13 trading.

14 “(3) REQUIRED REPORTING.—If the exception
15 of paragraph (2) applies and there is no national se-
16 curities exchange or swap execution facility that
17 makes the security-based swap available to trade,
18 the counterparties shall comply with any record-
19 keeping and transaction reporting requirements as
20 may be prescribed by the Commission with respect
21 to security-based swaps subject to the requirements
22 of paragraph (1).

23 “(b) EXCHANGE TRADING.—In adopting rules and
24 regulations, the Commission shall endeavor to eliminate
25 unnecessary impediments to the trading on national secu-
26 rities exchanges of contracts, agreements, or transactions

1 that would be swaps but for the trading of such contracts,
2 agreements or transactions on such a national securities
3 exchange.”.

4 (d) SWAP EXECUTION FACILITIES.—The Securities
5 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended
6 by adding after section 3B (as added by subsection (a))
7 the following:

8 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

9 “(a) REGISTRATION.—No person may operate a facil-
10 ity for the trading of security-based swaps unless the facil-
11 ity is registered as a swap execution facility under this
12 section.

13 “(b) REQUIREMENTS FOR TRADING.—

14 “(1) IN GENERAL.—A swap execution facility
15 that is registered under subsection (a) may list for
16 trading any security-based swap.

17 “(2) RULES FOR TRADING THROUGH THE FA-
18 CILITY.—Not later than 1 year after the date of the
19 enactment of the Derivative Markets Transparency
20 and Accountability Act of 2009, the Commission
21 shall adopt rules to allow a security-based swap to
22 be traded through the facilities of an exchange or a
23 swap execution facility. Such rules shall permit an
24 intermediary, acting as principal or agent, to enter
25 into or execute a security-based swap, notwith-

1 standing section 3B(b), if the security-based swap is
2 reported, recorded, or confirmed in accordance with
3 the rules of the exchange or swap execution facility.

4 “(c) TRADING BY EXCHANGES.—An exchange shall,
5 to the extent that the exchange also operates a swap exe-
6 cution facility and uses the same electronic trade execution
7 system for trading on the exchange and the swap execu-
8 tion facility, identify whether the electronic trading is tak-
9 ing place on the exchange or the swap execution facility.

10 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
11 CILITIES.—

12 “(1) IN GENERAL.—To be registered as, and to
13 maintain its registration as, a swap execution facil-
14 ity, the facility shall comply with the core principles
15 specified in this subsection and any requirement that
16 the Commission may impose by rule or regulation
17 pursuant to section 8a(5). Except where the Com-
18 mission determines otherwise by rule or regulation,
19 the facility shall have reasonable discretion in estab-
20 lishing the manner in which it complies with these
21 core principles.

22 “(2) COMPLIANCE WITH RULES.—The swap
23 execution facility shall—

24 “(A) monitor and enforce compliance with
25 any of the rules of the facility, including the

1 terms and conditions of the swaps traded on or
2 through the facility and any limitations on ac-
3 cess to the facility; and

4 “(B) establish and enforce trading and
5 participation rules that will deter abuses and
6 have the capacity to detect, investigate, and en-
7 force those rules, including means to—

8 “(i) provide market participants with
9 impartial access to the market; and

10 “(ii) capture information that may be
11 used in establishing whether rule violations
12 have occurred.

13 “(3) SECURITY-BASED SWAPS NOT READILY
14 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
15 tion facility shall permit trading only in security-
16 based swaps that are not readily susceptible to ma-
17 nipulation.

18 “(4) MONITORING OF TRADING.—The swap
19 execution facility shall—

20 “(A) establish and enforce rules or terms
21 and conditions defining, or specifications detail-
22 ing, trading procedures to be used in entering
23 and executing orders traded on or through its
24 facilities; and

1 “(B) monitor trading in swaps to prevent
2 manipulation, price distortion, and disruptions
3 of the delivery or cash settlement process
4 through surveillance, compliance, and discipli-
5 nary practices and procedures, including meth-
6 ods for conducting real-time monitoring of trad-
7 ing and comprehensive and accurate trade re-
8 constructions.

9 “(5) ABILITY TO OBTAIN INFORMATION.—The
10 swap execution facility shall—

11 “(A) establish and enforce rules that will
12 allow the facility to obtain any necessary infor-
13 mation to perform any of the functions de-
14 scribed in this section;

15 “(B) provide the information to the Com-
16 mission upon request; and

17 “(C) have the capacity to carry out such
18 international information-sharing agreements as
19 the Commission may require.

20 “(6) FINANCIAL INTEGRITY OF TRANS-
21 ACTIONS.—The swap execution facility shall estab-
22 lish and enforce rules and procedures for ensuring
23 the financial integrity of security-based swaps en-
24 tered on or through its facilities, including the clear-

1 ance and settlement of the security-based swaps pur-
2 suant to section 3B.

3 “(7) EMERGENCY AUTHORITY.—The swap exe-
4 cution facility shall adopt rules to provide for the ex-
5 ercise of emergency authority, in consultation or co-
6 operation with the Commission, where necessary and
7 appropriate, including the authority to suspend or
8 curtail trading in a security-based swap.

9 “(8) TIMELY PUBLICATION OF TRADING INFOR-
10 MATION.—The swap execution facility shall make
11 public timely information on price, trading volume,
12 and other trading data to the extent prescribed by
13 the Commission. The Commission shall evaluate the
14 impact of public disclosure on market liquidity in the
15 relevant market, and shall seek to avoid public dis-
16 closure of information in a manner that would sig-
17 nificantly reduce market liquidity. The Commission
18 shall not disclose information related to the internal
19 business decisions of particular market participants.

20 “(9) RECORDKEEPING AND REPORTING.—The
21 swap execution facility shall maintain records of all
22 activities related to the business of the facility, in-
23 cluding a complete audit trail, in a form and manner
24 acceptable to the Commission for a period of 5
25 years, and report to the Commission all information

1 determined by the Commission to be necessary or
2 appropriate for the Commission to perform its re-
3 sponsibilities under this Act in a form and manner
4 acceptable to the Commission. The Commission shall
5 adopt data collection and reporting requirements for
6 swap execution facilities that are comparable to cor-
7 responding requirements for clearing agencies and
8 security-based swap repositories.

9 “(10) CONFLICTS OF INTEREST.—The swap
10 execution facility shall—

11 “(A) establish and enforce rules to mini-
12 mize conflicts of interest in its decision-making
13 process; and

14 “(B) establish a process for resolving the
15 conflicts of interest.

16 “(11) FINANCIAL RESOURCES.—The swap exe-
17 cution facility shall have adequate financial, oper-
18 ational, and managerial resources to discharge its
19 responsibilities. Such financial resources shall be
20 considered adequate if their value exceeds the total
21 amount that would enable the facility to cover its op-
22 erating costs for a period of one year, calculated on
23 a rolling basis.

24 “(12) SYSTEM SAFEGUARDS.—The swap execu-
25 tion facility shall—

1 “(A) establish and maintain a program of
2 risk analysis and oversight to identify and mini-
3 mize sources of operational risk, through the
4 development of appropriate controls and proce-
5 dures, and the development of automated sys-
6 tems, that are reliable, secure, and have ade-
7 quate scalable capacity;

8 “(B) establish and maintain emergency
9 procedures, backup facilities, and a plan for dis-
10 aster recovery that allow for the timely recovery
11 and resumption of operations and the fulfill-
12 ment of the swap execution facility’s respon-
13 sibilities and obligation; and

14 “(C) periodically conduct tests to verify
15 that backup resources are sufficient to ensure
16 continued order processing and trade matching,
17 price reporting, market surveillance, and main-
18 tenance of a comprehensive and accurate audit
19 trail.

20 “(13) DESIGNATION OF COMPLIANCE OFFI-
21 CER.—

22 “(A) IN GENERAL.—Each swap execution
23 facility shall designate an individual to serve as
24 a compliance officer.

25 “(B) DUTIES.—The compliance officer—

1 “(i) shall report directly to the board
2 or to the senior officer of the facility; and

3 “(ii) shall—

4 “(I) review compliance with the
5 core principles in section 3B(e).

6 “(II) in consultation with the
7 board of the facility, a body per-
8 forming a function similar to that of
9 a board, or the senior officer of the
10 facility, resolve any conflicts of inter-
11 est that may arise;

12 “(III) be responsible for admin-
13 istering the policies and procedures
14 required to be established pursuant to
15 this section; and

16 “(IV) ensure compliance with se-
17 curities laws and the rules and regula-
18 tions issued thereunder, including
19 rules prescribed by the Commission
20 pursuant to this section; and

21 “(iii) shall establish procedures for re-
22 mediation of non-compliance issues found
23 during compliance office reviews,
24 lookbacks, internal or external audit find-
25 ings, self-reported errors, or through vali-

1 dated complaints and to establish the han-
2 dling, management response, remediation,
3 re-testing, and closing of non-compliant
4 issues.

5 “(C) ANNUAL REPORTS REQUIRED.—The
6 compliance officer shall annually prepare and
7 sign a report on the compliance of the facility
8 with the securities laws and its policies and pro-
9 cedures, including its code of ethics and conflict
10 of interest policies, in accordance with rules
11 prescribed by the Commission. Such compliance
12 report shall accompany the financial reports of
13 the facility that are required to be furnished to
14 the Commission pursuant to this section and
15 shall include a certification that, under penalty
16 of law, the report is accurate and complete.

17 “(e) EXEMPTIONS.—The Commission may exempt,
18 conditionally or unconditionally, a swap execution facility
19 from registration under this section if the Commission
20 finds that such organization is subject to comparable,
21 comprehensive supervision and regulation on a consoli-
22 dated basis by the Commodity Futures Trading Commis-
23 sion, a Prudential Regulator or the appropriate govern-
24 mental authorities in the organization’s home country or

1 if necessary or appropriate in the public interest and con-
2 sistent with the purpose of this Act.

3 “(f) RULES.—Not later than 1 year after the date
4 of the enactment of the Derivative Markets Transparency
5 and Accountability Act of 2009, the Commission shall pre-
6 scribe rules governing the regulation of swap execution fa-
7 cilities under this section.”.

8 (e) SEGREGATION OF ASSETS HELD AS COLLATERAL
9 IN SWAP TRANSACTIONS.—The Securities Exchange Act
10 of 1934 (15 U.S.C. 78a et seq.) is further amended by
11 adding after section 3C (as added by subsection (b)) the
12 following:

13 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
14 **IN SECURITY-BASED SWAP TRANSACTIONS.**

15 “(a) OVER-THE-COUNTER SWAPS.—At the request of
16 a counterparty to a security-based swap who provides
17 funds or other property to a security-based swap dealer
18 as initial margin or collateral to secure the obligations of
19 the counterparty under a security-based swap between the
20 counterparty and the security-based swap dealer that is
21 not submitted for clearing to a derivatives clearing agency,
22 the security-based swap dealer shall segregate the funds
23 or other property for the benefit of the counterparty, and
24 maintain the funds or other property in an account which
25 is carried by a third-party custodian and designated as

1 a segregated account for the counterparty, in accordance
2 with such rules and regulations as the Commission or Pru-
3 dential Regulator may prescribe. If a security-based swap
4 counterparty is a security-based swap dealer or major se-
5 curity-based swap participant who owns more than 20 per-
6 cent of, or has more than 50 percent representation on
7 the board of directors of a custodian, the custodian shall
8 not be considered independent from the security-based
9 swap counterparties for purposes of the preceding sen-
10 tence. This subsection shall not be interpreted to preclude
11 commercial arrangements regarding the investment of the
12 segregated funds or other property and the related alloca-
13 tion of gains and losses resulting from any such invest-
14 ment.

15 “(b) FURTHER AUDIT REPORTING.—If a security-
16 based swap dealer does not segregate funds pursuant to
17 the request of a security-based swap counterparty in ac-
18 cordance with subsection (a), the security-based swap
19 dealer shall report to its counterparty on a quarterly basis
20 that its procedures relating to margin and collateral re-
21 quirements are in compliance with the agreement of the
22 counterparties.”.

23 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6
24 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
25 is amended by adding at the end the following:

1 “(l) It shall be unlawful for any person to effect a
2 transaction in a security-based swap with or for a person
3 that is not an eligible contract participant unless such
4 transaction is effected on a national securities exchange
5 registered pursuant to subsection (b).”.

6 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
7 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
8 through (3) of section 9(b) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
10 as follows:

11 “(1) any transaction in connection with any se-
12 curity whereby any party to such transaction ac-
13 quires (A) any put, call, straddle, or other option or
14 privilege of buying the security from or selling the
15 security to another without being bound to do so;
16 (B) any security futures product on the security; or
17 (C) any security-based swap involving the security or
18 the issuer of the security; or

19 “(2) any transaction in connection with any se-
20 curity with relation to which he has, directly or indi-
21 rectly, any interest in any (A) such put, call, strad-
22 dle, option, or privilege; (B) such security futures
23 product; or (C) such security-based swap; or

24 “(3) any transaction in any security for the ac-
25 count of any person who he has reason to believe

1 has, and who actually has, directly or indirectly, any
2 interest in any (A) such put, call, straddle, option,
3 or privilege; (B) such security futures product with
4 relation to such security; or (C) any security-based
5 swap involving such security or the issuer of such se-
6 curity.”.

7 (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,
8 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
9 BASED SWAPS.—Section 9 of the Securities Exchange Act
10 of 1934 (15 U.S.C. 78i) is amended by adding at the end
11 the following:

12 “(i) It shall be unlawful for any person, directly or
13 indirectly, by the use of any means or instrumentality of
14 interstate commerce or of the mails, or of any facility of
15 any national securities exchange, to effect any transaction
16 in, or to induce or attempt to induce the purchase or sale
17 of, any security-based swap, in connection with which such
18 person engages in any fraudulent, deceptive, or manipula-
19 tive act or practice, makes any fictitious quotation, or en-
20 gages in any transaction, practice, or course of business
21 which operates as a fraud or deceit upon any person. The
22 Commission shall, for the purposes of this paragraph, by
23 rules and regulations define, and prescribe means reason-
24 ably designed to prevent, such transactions, acts, prac-

1 tices, and courses of business as are fraudulent, deceptive,
 2 or manipulative, and such quotations as are fictitious.”.

3 (i) POSITION LIMITS AND POSITION ACCOUNT-
 4 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
 5 Exchange Act of 1934 is amended by inserting after sec-
 6 tion 10A (15 U.S.C. 78j–1) the following new section:

7 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
 8 **ABILITY FOR SECURITY-BASED SWAPS AND**
 9 **LARGE TRADER REPORTING.**

10 “(a) POSITION LIMITS.—As a means reasonably de-
 11 signed to prevent fraud and manipulation, the Commission
 12 may, by rule or regulation, as necessary or appropriate
 13 in the public interest or for the protection of investors,
 14 establish limits (including related hedge exemption provi-
 15 sions) on the size of positions in any security-based swap
 16 that may be held by any person. In establishing such lim-
 17 its, the Commission may require any person to aggregate
 18 positions in—

19 “(1) any security-based swap and any security
 20 or loan or group or index of securities or loans on
 21 which such security-based swap is based, which such
 22 security-based swap references, or to which such se-
 23 curity-based swap is related as described in section
 24 3(a)(68), and any other instrument relating to such

1 security or loan or group or index of securities or
2 loans; or

3 “(2) any security-based swap and (A) any secu-
4 rity or group or index of securities, the price, yield,
5 value, or volatility of which, or of which any interest
6 therein, is the basis for a material term of such se-
7 curity-based swap as described in section 3(a)(76)
8 and (B) any security-based swap and any other in-
9 strument relating to the same security or group or
10 index of securities.

11 “(b) EXEMPTIONS.—The Commission, by rule, regu-
12 lation, or order, may conditionally or unconditionally ex-
13 empt any person or class of persons, any security-based
14 swap or class of security-based swaps, or any transaction
15 or class of transactions from any requirement it may es-
16 tablish under this section with respect to position limits.

17 “(c) SRO RULES.—

18 “(1) IN GENERAL.—As a means reasonably de-
19 signed to prevent fraud or manipulation, the Com-
20 mission, by rule, regulation, or order, as necessary
21 or appropriate in the public interest, for the protec-
22 tion of investors, or otherwise in furtherance of the
23 purposes of this title, may direct a self-regulatory
24 organization—

1 “(A) to adopt rules regarding the size of
2 positions in any security-based swap that may
3 be held by—

4 “(i) any member of such self-regu-
5 latory organization; or

6 “(ii) any person for whom a member
7 of such self-regulatory organization effects
8 transactions in such security-based swap;
9 and

10 “(B) to adopt rules reasonably designed to
11 ensure compliance with requirements prescribed
12 by the Commission under subsection (c)(1)(A).

13 “(2) REQUIREMENT TO AGGREGATE POSI-
14 TIONS.—In establishing such limits, the self-regu-
15 latory organization may require such member or per-
16 son to aggregate positions in—

17 “(A) any security-based swap and any se-
18 curity or loan or group or index of securities or
19 loans on which such security-based swap is
20 based, which such security-based swap ref-
21 erences, or to which such security-based swap is
22 related as described in section 3(a)(68), and
23 any other instrument relating to such security
24 or loan or group or index of securities or loans;
25 or

1 “(B)(i) any security-based swap; and

2 “(ii) any security-based swap and any
3 other instrument relating to the same security
4 or group or index of securities.

5 “(d) LARGE TRADER REPORTING.—The Commis-
6 sion, by rule or regulation, may require any person that
7 effects transactions for such person’s own account or the
8 account of others in any securities-based swap or
9 uncleared security-based swap agreement and any security
10 or loan or group or index of securities or loans as set forth
11 in paragraphs (1) and (2) of subsection (a) under this sec-
12 tion to report such information as the Commission may
13 prescribe regarding any position or positions in any secu-
14 rity-based swap or uncleared security-based swap agree-
15 ment and any security or loan or group or index of securi-
16 ties or loans and any other instrument relating to such
17 security or loan or group or index of securities or loans
18 as set forth in paragraphs (1) and (2) of subsection (a)
19 under this section.”.

20 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-
21 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78m) is amended by add-
23 ing at the end the following:

24 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
25 BASED SWAP DATA.—

1 “(1) IN GENERAL.—The Commission, or a per-
2 son designated by the Commission pursuant to para-
3 graph (2), shall make available to the public, in a
4 manner that does not disclose the business trans-
5 actions and market positions of any person, aggre-
6 gate data on security-based swap trading volumes
7 and positions from the sources set forth in para-
8 graph (3).

9 “(2) DESIGNEE OF THE COMMISSION.—The
10 Commission may designate a clearing agency or a
11 security-based swap repository to carry out the pub-
12 lic reporting described in paragraph (1).

13 “(3) SOURCES OF INFORMATION.—The sources
14 of the information to be publicly reported as de-
15 scribed in paragraph (1) are—

16 “(A) clearing agencies pursuant to section
17 3A;

18 “(B) security-based swap repositories pur-
19 suant to subsection (n); and

20 “(C) reports received by the Commission
21 pursuant to section 13A.

22 “(n) SECURITY-BASED SWAP REPOSITORIES.—

23 “(1) REGISTRATION REQUIREMENT.—

24 “(A) IN GENERAL.—It shall be unlawful
25 for a security-based swap repository, unless reg-

1 istered with the Commission, directly or indi-
2 rectly to make use of the mails or any means
3 or instrumentality of interstate commerce to
4 perform the functions of a security-based swap
5 repository.

6 “(B) INSPECTION AND EXAMINATION.—
7 Registered security-based swap repositories
8 shall be subject to inspection and examination
9 by any representatives of the Commission.

10 “(2) STANDARD SETTING.—

11 “(A) DATA IDENTIFICATION.—The Com-
12 mission shall prescribe standards that specify
13 the data elements for each security-based swap
14 that shall be collected and maintained by each
15 security-based swap repository.

16 “(B) DATA COLLECTION AND MAINTEN-
17 NANCE.—The Commission shall prescribe data
18 collection and data maintenance standards for
19 security-based swap repositories.

20 “(C) COMPARABILITY.—The standards
21 prescribed by the Commission under this sub-
22 section shall be comparable to the data stand-
23 ards imposed by the Commission on clearing
24 agencies that clear security-based swaps.

1 “(3) DUTIES.—A security-based swap reposi-
2 tory shall—

3 “(A) accept data prescribed by the Com-
4 mission for each security-based swap under this
5 paragraph (2);

6 “(B) maintain such data in such form and
7 manner and for such period as may be required
8 by the Commission;

9 “(C) provide to the Commission, or its des-
10 ignee, such information as is required by, and
11 in a form and at a frequency to be determined
12 by, the Commission, in order to comply with the
13 public reporting requirements contained in sub-
14 section (m); and

15 “(D) make available, on a confidential
16 basis, all data obtained by the security-based
17 swap repository, including individual
18 counterparty trade and position data, to the
19 Commission, the appropriate Federal banking
20 agencies, the Commodity Futures Trading
21 Commission, the Financial Services Oversight
22 Council, and the Department of Justice or to
23 other persons the Commission deems appro-
24 priate, including foreign financial supervisors

1 (including foreign futures authorities), foreign
2 central banks, and foreign ministries.

3 “(4) RULES.—Not later than 1 year after the
4 date of the enactment of the Derivative Markets
5 Transparency and Accountability Act of 2009, the
6 Commission shall adopt rules governing persons that
7 are registered under this section, including rules
8 that specify the data elements that shall be collected
9 and maintained.

10 “(5) EXEMPTIONS.—The Commission may ex-
11 empt, conditionally or unconditionally, a security-
12 based swap repository from the requirements of this
13 section if the Commission finds that such security-
14 based swap repository is subject to comparable, com-
15 prehensive supervision or regulation on a consoli-
16 dated basis by the Commodity Futures Trading
17 Commission, a Prudential Regulator or the appro-
18 priate governmental authorities in the organization’s
19 home country or if necessary or appropriate in the
20 public interest and consistent with the purpose of
21 this Act.”.

1 **SEC. 3204. REGISTRATION AND REGULATION OF SWAP**
2 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 15E (15
5 U.S.C. 78o–7) the following:

6 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
7 **BASED SWAP DEALERS AND MAJOR SECU-**
8 **RITY-BASED SWAP PARTICIPANTS.**

9 “(a) REGISTRATION.—

10 “(1) It shall be unlawful for any person to act
11 as a security-based swap dealer unless such person
12 is registered as a security-based swap dealer with
13 the Commission.

14 “(2) It shall be unlawful for any person to act
15 as a major security-based swap participant unless
16 such person is registered as a major security-based
17 swap participant with the Commission.

18 “(b) REQUIREMENTS.—

19 “(1) IN GENERAL.—A person shall register as
20 a security-based swap dealer or major security-based
21 swap participant by filing a registration application
22 with the Commission.

23 “(2) CONTENTS.—The application shall be
24 made in such form and manner as prescribed by the
25 Commission, giving any information and facts as the
26 Commission may deem necessary concerning the

1 business in which the applicant is or will be engaged.
2 Such person, when registered as a security-based
3 swap dealer or major security-based swap partici-
4 pant, shall continue to report and furnish to the
5 Commission such information pertaining to such
6 person's business as the Commission may require.

7 “(3) EXPIRATION.—Each registration shall ex-
8 pire at such time as the Commission may by rule or
9 regulation prescribe.

10 “(4) RULES.—Except as provided in sub-
11 sections (c) and (d), the Commission may prescribe
12 rules applicable to security-based swap dealers and
13 major security-based swap participants, including
14 rules that limit the activities of security-based swap
15 dealers and major security-based swap participants.
16 Except as provided in subsection (d)(1)(A), the
17 Commission may provide conditional or uncondi-
18 tional exemptions from some or all of the rules or
19 requirements prescribed under this section for secu-
20 rity-based swap dealers and major security-based
21 swap participants.

22 “(5) TRANSITION.—Rules adopted under this
23 section shall provide for the registration of security-
24 based swap dealers and major security-based swap
25 participants no later than 1 year after the effective

1 date of the Derivative Markets Transparency and
2 Accountability Act of 2009.

3 “(c) RULES.—

4 “(1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of the Derivative Markets
6 Transparency and Accountability Act of 2009, the
7 Commission shall adopt rules for persons that are
8 registered as security-based swap dealers or major
9 security-based swap participants under this Act.

10 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
11 MENTS.—The Commission shall not prescribe rules
12 imposing prudential requirements on security-based
13 swap dealers or major security-based swap partici-
14 pants for which there is a Prudential Regulator.
15 This provision shall not be construed as limiting the
16 authority of the Commission to prescribe appropriate
17 business conduct, reporting, and recordkeeping re-
18 quirements to protect investors.

19 “(d) CAPITAL AND MARGIN REQUIREMENTS.—

20 “(1) IN GENERAL.—

21 “(A) BANK SECURITY-BASED SWAP DEAL-
22 ERS AND MAJOR SECURITY-BASED SWAP PAR-
23 TICIPANTS.—Each registered security-based
24 swap dealer and major security-based swap par-
25 ticipant for which there is a Prudential Regu-

1 lator shall meet such minimum capital require-
2 ments and minimum initial and variation mar-
3 gin requirements as the Prudential Regulators
4 shall by rule or regulation jointly prescribe
5 that—

6 “(i) help ensure the safety and sound-
7 ness of the security-based swap dealer or
8 major security-based swap participant; and

9 “(ii) are appropriate for the risk asso-
10 ciated with the non-cleared swaps held as
11 a swap dealer or major swap participant.

12 “(B) NON-BANK SECURITY-BASED SWAP
13 DEALERS AND MAJOR SECURITY-BASED SWAP
14 PARTICIPANTS.—Each registered security-based
15 swap dealer and major security-based swap par-
16 ticipant for which there is not a Prudential
17 Regulator shall meet such minimum capital re-
18 quirements and minimum initial and variation
19 margin requirements as the Commission shall
20 by rule or regulation prescribe that—

21 “(i) help ensure the safety and sound-
22 ness of the security-based swap dealer or
23 major security-based swap participant; and

1 “(ii) are appropriate for the risk asso-
2 ciated with the non-cleared swaps held as
3 the swap dealer or major swap participant.

4 “(2) RULES.—

5 “(A) BANK SECURITY-BASED SWAP DEAL-
6 ERS AND MAJOR SECURITY-BASED SWAP PAR-
7 TICIPANTS.—Not later than 1 year after the
8 date of the enactment of the Derivative Markets
9 Transparency and Accountability Act of 2009,
10 the Prudential Regulators, in consultation with
11 the Commission, shall jointly adopt rules impos-
12 ing capital and margin requirements under this
13 subsection for security-based swap dealers and
14 major security-based swap participants, with re-
15 spect to their activities as a security-based swap
16 dealer or major security-based swap participant
17 for which there is a Prudential Regulator.

18 “(B) NON-BANK SECURITY-BASED SWAP
19 DEALERS AND MAJOR SECURITY-BASED SWAP
20 PARTICIPANTS.—Not later than 1 year after the
21 date of the enactment of the Derivative Markets
22 Transparency and Accountability Act of 2009,
23 the Commission shall adopt rules imposing cap-
24 ital and margin requirements under this sub-
25 section for security-based swap dealers and

1 major security-based swap participants for
2 which there is no Prudential Regulator.

3 “(3) AUTHORITY.—Nothing in this section shall
4 limit the authority of the Commission to set capital
5 requirements for a broker or dealer registered in ac-
6 cordance with section 15 of this Act.

7 “(e) REPORTING AND RECORDKEEPING.—

8 “(1) IN GENERAL.—Each registered security-
9 based swap dealer and major security-based swap
10 participant—

11 “(A) shall make such reports as are pre-
12 scribed by the Commission by rule or regulation
13 regarding the transactions and positions and fi-
14 nancial condition of such person;

15 “(B) for which—

16 “(i) there is a Prudential Regulator
17 shall keep books and records of all activi-
18 ties related to its business as a security-
19 based swap dealer or major security-based
20 swap participant in such form and manner
21 and for such period as may be prescribed
22 by the Commission by rule or regulation;

23 “(ii) there is no Prudential Regulator
24 shall keep books and records in such form
25 and manner and for such period as may be

1 prescribed by the Commission by rule or
2 regulation; and

3 “(C) shall keep such books and records
4 open to inspection and examination by any rep-
5 resentative of the Commission.

6 “(2) RULES.—Not later than 1 year after the
7 date of enactment of the Derivative Markets Trans-
8 parency and Accountability Act of 2009, the Com-
9 mission shall adopt rules governing reporting and
10 recordkeeping for security-based swap dealers and
11 major security-based swap participants.

12 “(f) DAILY TRADING RECORDS.—

13 “(1) IN GENERAL.—Each registered security-
14 based swap dealer and major security-based swap
15 participant shall maintain daily trading records of
16 its security-based swaps and all related records (in-
17 cluding related transactions) and recorded commu-
18 nications including but not limited to electronic mail,
19 instant messages, and recordings of telephone calls,
20 for such period as may be prescribed by the Com-
21 mission by rule or regulation.

22 “(2) INFORMATION REQUIREMENTS.—The daily
23 trading records shall include such information as the
24 Commission shall prescribe by rule or regulation.

1 “(3) CUSTOMER RECORDS.—Each registered se-
2 curity-based swap dealer or major security-based
3 swap participant shall maintain daily trading records
4 for each customer or counterparty in such manner
5 and form as to be identifiable with each security-
6 based swap transaction.

7 “(4) AUDIT TRAIL.—Each registered security-
8 based swap dealer or major security-based swap par-
9 ticipant shall maintain a complete audit trail for
10 conducting comprehensive and accurate trade recon-
11 structions.

12 “(5) RULES.—Not later than 1 year after the
13 date of the enactment of the Derivative Markets
14 Transparency and Accountability Act of 2009, the
15 Commission shall adopt rules governing daily trad-
16 ing records for security-based swap dealers and
17 major security-based swap participants.

18 “(g) BUSINESS CONDUCT STANDARDS.—

19 “(1) IN GENERAL.—Each registered security-
20 based swap dealer and major security-based swap
21 participant shall conform with business conduct
22 standards as may be prescribed by the Commission
23 by rule or regulation addressing—

24 “(A) fraud, manipulation, and other abu-
25 sive practices involving security-based swaps

1 (including security-based swaps that are offered
2 but not entered into);

3 “(B) diligent supervision of its business as
4 a security-based swap dealer;

5 “(C) adherence to all applicable position
6 limits; and

7 “(D) such other matters as the Commis-
8 sion shall determine to be necessary or appro-
9 priate.

10 “(2) BUSINESS CONDUCT REQUIREMENTS.—
11 Business conduct requirements adopted by the Com-
12 mission shall—

13 “(A) establish the standard of care for a
14 security-based swap dealer or major security-
15 based swap participant to verify that any secu-
16 rity-based swap counterparty meets the eligi-
17 bility standards for an eligible contract partici-
18 pant;

19 “(B) require disclosure by the security-
20 based swap dealer or major security-based swap
21 participant to any counterparty to the security-
22 based swap (other than a security-based swap
23 dealer or major security-based swap partici-
24 pant) of:

1 “(i) information about the material
2 risks and characteristics of the security-
3 based swap;

4 “(ii) for cleared security-based swaps,
5 upon the request of the counterparty, the
6 daily mark from the appropriate clearing
7 agency, and for non-cleared security-based
8 swaps, upon request of the counterparty,
9 the daily mark of the security-based swap
10 dealer or major security-based swap partic-
11 ipant; and

12 “(iii) any other material incentives or
13 conflicts of interest that the security-based
14 swap dealer or major security-based swap
15 participant may have in connection with
16 the security-based swap; and

17 “(C) establish such other standards and
18 requirements as the Commission may determine
19 are necessary or appropriate in the public inter-
20 est, for the protection of investors, or otherwise
21 in furtherance of the purposes of this title.

22 “(3) RULES.—The Commission shall prescribe
23 rules under this subsection governing business con-
24 duct standards for security-based swap dealers and
25 major security-based swap participants not later

1 than 1 year after the date of enactment of the De-
2 rivative Markets Transparency and Accountability
3 Act of 2009.

4 “(h) DOCUMENTATION STANDARDS.—

5 “(1) IN GENERAL.—Each registered security-
6 based swap dealer and major security-based swap
7 participant shall conform with standards, as may be
8 prescribed by the Commission by rule or regulation,
9 addressing timely and accurate confirmation, proc-
10 essing, netting, documentation, and valuation of all
11 security-based swaps.

12 “(2) RULES.—Not later than 1 year after the
13 date of enactment of the Derivative Markets Trans-
14 parency and Accountability Act of 2009, the Com-
15 mission and the appropriate Federal banking agen-
16 cies, shall adopt rules governing the standards de-
17 scribed in paragraph (1) for security-based swap
18 dealers and major security-based swap participants.

19 “(i) DEALER RESPONSIBILITIES.—Each registered
20 security-based swap dealer and major security-based swap
21 participant at all times shall comply with the following re-
22 quirements:

23 “(1) MONITORING OF TRADING.—The security-
24 based swap dealer or major security-based swap par-
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position
2 limits.

3 “(2) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The security-based swap dealer or major se-
5 curity-based swap participant shall disclose to the
6 Commission or to the Prudential Regulator for such
7 security-based swap dealer or major security-based
8 swap participant, as applicable, information con-
9 cerning—

10 “(A) terms and conditions of its security-
11 based swaps;

12 “(B) security-based swap trading oper-
13 ations, mechanisms, and practices;

14 “(C) financial integrity protections relating
15 to security-based swaps; and

16 “(D) other information relevant to its trad-
17 ing in security-based swaps.

18 “(3) ABILITY TO OBTAIN INFORMATION.—The
19 security-based swap dealer or major swap security-
20 based participant shall—

21 “(A) establish and enforce internal systems
22 and procedures to obtain any necessary infor-
23 mation to perform any of the functions de-
24 scribed in this section; and

1 “(B) provide the information to the Com-
2 mission or to the Prudential Regulator for such
3 security-based swap dealer or major security-
4 based swap participant, as applicable, upon re-
5 quest.

6 “(4) CONFLICTS OF INTEREST.—The security-
7 based swap dealer and major security-based swap
8 participant shall implement conflict-of-interest sys-
9 tems and procedures that—

10 “(A) establish structural and institutional
11 safeguards to assure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any security
14 are separated by appropriate informational par-
15 titions within the firm from the review, pres-
16 sure, or oversight of those whose involvement in
17 trading or clearing activities might potentially
18 bias their judgment or supervision; and

19 “(B) address such other issues as the
20 Commission determines appropriate.

21 “(j) STATUTORY DISQUALIFICATION.—Except to the
22 extent otherwise specifically provided by rule, regulation,
23 or order of the Commission, it shall be unlawful for a secu-
24 rity-based swap dealer or a major security-based swap par-
25 ticipant to permit any person associated with a security-

1 based swap dealer or a major security-based swap partici-
2 pant who is subject to a statutory disqualification to effect
3 or be involved in effecting security-based swaps on behalf
4 of such security-based swap dealer or major security-based
5 swap participant, if such security-based swap dealer or
6 major security-based swap participant knew, or in the ex-
7 ercise of reasonable care should have known, of such stat-
8 utory disqualification.

9 “(k) ENFORCEMENT AND ADMINISTRATIVE PRO-
10 CEEDING AUTHORITY.—

11 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

12 “(A) SEC.—Except as provided in sub-
13 paragraph (B), the Commission shall have ex-
14 clusive authority to enforce the amendments
15 made by subtitle B of the Derivative Markets
16 Transparency and Accountability Act of 2009
17 with respect to any person.

18 “(B) PRUDENTIAL REGULATORS.—The
19 Prudential Regulators shall have exclusive au-
20 thority to enforce the provisions of section
21 15F(d) and other prudential requirements of
22 this Act with respect to banks, and branches or
23 agencies of foreign banks that are security-
24 based swap dealers or major security-based
25 swap participants.

1 “(C) REFERRAL.—

2 “(i) VIOLATIONS OF NONPRUDENTIAL
3 REQUIREMENTS.—If the Prudential Regu-
4 lator for a security-based swap dealer or
5 major security-based swap participant has
6 cause to believe that such security-based
7 swap dealer or major security-based swap
8 participant may have engaged in conduct
9 that constitutes a violation of the non-
10 prudential requirements of section 15F or
11 rules adopted by the Commission there-
12 under, that Prudential Regulator may rec-
13 ommend in writing to the Commission that
14 the Commission initiate an enforcement
15 proceeding as authorized under this Act.
16 The recommendation shall be accompanied
17 by a written explanation of the concerns
18 giving rise to the recommendation.

19 “(ii) VIOLATIONS OF PRUDENTIAL RE-
20 QUIREMENTS.—If the Commission has
21 cause to believe that a securities-based
22 swap dealer or major securities-based swap
23 participant that has a Prudential Regu-
24 lator may have engaged in conduct that
25 constitute a violation of the prudential re-

1 quirements of section 15F(e) or rules
2 adopted thereunder, the Commission may
3 recommend in writing to the Prudential
4 Regulator that the Prudential Regulator
5 initiate an enforcement proceeding as au-
6 thorized under this Act. The recommenda-
7 tion shall be accompanied by a written ex-
8 planation of the concerns giving rise to the
9 recommendation.

10 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
11 AND HEARING.—The Commission, by order, shall
12 censure, place limitations on the activities, functions,
13 or operations of, or revoke the registration of any se-
14 curity-based swap dealer or major security-based
15 swap participant that has registered with the Com-
16 mission pursuant to subsection (b) if it finds, on the
17 record after notice and opportunity for hearing, that
18 such censure, placing of limitations, or revocation is
19 in the public interest and that such security-based
20 swap dealer or major security-based swap partici-
21 pant, or any person associated with such security-
22 based swap dealer or major security-based swap par-
23 ticipant effecting or involved in effecting trans-
24 actions in security-based swaps on behalf of such se-
25 curity-based swap dealer or major security-based

1 swap participant, whether prior or subsequent to be-
2 coming so associated—

3 “(A) has committed or omitted any act, or
4 is subject to an order or finding, enumerated in
5 subparagraph (A), (D), or (E) of paragraph (4)
6 of section 15(b);

7 “(B) has been convicted of any offense
8 specified in subparagraph (B) of such para-
9 graph (4) within 10 years of the commencement
10 of the proceedings under this subsection;

11 “(C) is enjoined from any action, conduct,
12 or practice specified in subparagraph (C) of
13 such paragraph (4);

14 “(D) is subject to an order or a final order
15 specified in subparagraph (F) or (H), respec-
16 tively, of such paragraph (4); or

17 “(E) has been found by a foreign financial
18 regulatory authority to have committed or omit-
19 ted any act, or violated any foreign statute or
20 regulation, enumerated in subparagraph (G) of
21 such paragraph (4).

22 “(3) ASSOCIATED PERSONS.—With respect to
23 any person who is associated, who is seeking to be-
24 come associated, or, at the time of the alleged mis-
25 conduct, who was associated or was seeking to be-

1 come associated with a security-based swap dealer or
2 major security-based swap participant for the pur-
3 pose of effecting or being involved in effecting secu-
4 rity-based swaps on behalf of such security-based
5 swap dealer or major security-based swap partici-
6 pant, the Commission, by order, shall censure, place
7 limitations on the activities or functions of such per-
8 son, or suspend for a period not exceeding 12
9 months, or bar such person from being associated
10 with a security-based swap dealer or major security-
11 based swap participant, if the Commission finds, on
12 the record after notice and opportunity for a hear-
13 ing, that such censure, placing of limitations, sus-
14 pension, or bar is in the public interest and that
15 such person—

16 “(A) has committed or omitted any act, or
17 is subject to an order or finding, enumerated in
18 subparagraph (A), (D), or (E) of paragraph (4)
19 of section 15(b);

20 “(B) has been convicted of any offense
21 specified in subparagraph (B) of such para-
22 graph (4) within 10 years of the commencement
23 of the proceedings under this subsection;

1 “(C) is enjoined from any action, conduct,
2 or practice specified in subparagraph (C) of
3 such paragraph (4);

4 “(D) is subject to an order or a final order
5 specified in subparagraph (F) or (H), respec-
6 tively, of such paragraph (4); or

7 “(E) has been found by a foreign financial
8 regulatory authority to have committed or omit-
9 ted any act, or violated any foreign statute or
10 regulation, enumerated in subparagraph (G) of
11 such paragraph (4).

12 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
13 ful—

14 “(A) for any person as to whom an order
15 under paragraph (3) is in effect, without the
16 consent of the Commission, willfully to become,
17 or to be, associated with a security-based swap
18 dealer or major security-based swap participant
19 in contravention of such order; or

20 “(B) for any security-based swap dealer or
21 major security-based swap participant to permit
22 such a person, without the consent of the Com-
23 mission, to become or remain a person associ-
24 ated with the security-based swap dealer or
25 major security-based swap participant in con-

1 travention of such order, if such security-based
 2 swap dealer or major security-based swap par-
 3 ticipant knew, or in the exercise of reasonable
 4 care should have known, of such order.”.

5 **SEC. 3205. REPORTING AND RECORDKEEPING.**

6 (a) The Securities Exchange Act of 1934 (15 U.S.C.
 7 78a et seq.) is amended by inserting after section 13 the
 8 following section:

9 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
 10 **TAIN SECURITY-BASED SWAPS.**

11 “(a) IN GENERAL.—Any person who enters into a se-
 12 curity-based swap and—

13 “(1) did not clear the security-based swap in
 14 accordance with section 3A; and

15 “(2) did not have data regarding the security-
 16 based swap accepted by a security-based swap repos-
 17 itory in accordance with rules adopted by the Com-
 18 mission under section 13(n),

19 shall meet the requirements in subsection (b).

20 “(b) REPORTS.—Any person described in subsection
 21 (a) shall—

22 “(1) make such reports in such form and man-
 23 ner and for such period as the Commission shall pre-
 24 scribe by rule or regulation regarding the security-
 25 based swaps held by the person; and

1 “(2) keep books and records pertaining to the
2 security-based swaps held by the person in such
3 form and manner and for such period as may be re-
4 quired by the Commission, which books and records
5 shall be open to inspection by any representative of
6 the Commission, an appropriate Federal banking
7 agency, the Commodity Futures Trading Commis-
8 sion, the Financial Services Oversight Council, and
9 the Department of Justice.

10 “(c) IDENTICAL DATA.—In adopting rules under this
11 section, the Commission shall require persons described in
12 subsection (a) to report the same or more comprehensive
13 data than the Commission requires security-based swap
14 repositories to collect under subsection (n).”.

15 (b) BENEFICIAL OWNERSHIP REPORTING.—

16 (1) Section 13(d)(1) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
18 inserting “or otherwise becomes or is deemed to be-
19 come a beneficial owner of any of the foregoing upon
20 the purchase or sale of a security-based swap or
21 other derivative instrument that the Commission
22 may define by rule, and” after “Alaska Native
23 Claims Settlement Act,”; and

24 (2) Section 13(g)(1) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

1 inserting “or otherwise becomes or is deemed to be-
2 come a beneficial owner of any security of a class de-
3 scribed in subsection (d)(1) upon the purchase or
4 sale of a security-based swap or other derivative in-
5 strument that the Commission may define by rule”
6 after “subsection (d)(1) of this section”.

7 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
8 AGERS.—Section 13(f)(1) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
10 “or otherwise becomes or is deemed to become a beneficial
11 owner of any security of a class described in subsection
12 (d)(1) upon the purchase or sale of a security-based swap
13 or other derivative instrument that the Commission may
14 define by rule,” after “subsection (d)(1) of this section”.

15 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
16 Section 15(b)(4) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o(b)(4)) is amended—

18 (1) in subparagraph (C), by adding “security-
19 based swap dealer, major security-based swap partic-
20 ipant,” after “government securities dealer,”; and

21 (2) in subparagraph (F), by adding “, or secu-
22 rity-based swap dealer, or a major security-based
23 swap participant” after “or dealer”.

1 (e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section
2 13 of the Securities Exchange Act of 1934 (15 U.S.C.
3 78m) is amended by adding at the end the following:

4 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
5 section and section 16, a person shall be deemed to acquire
6 beneficial ownership of an equity security based on the
7 purchase or sale of a security-based swap or other deriva-
8 tive instrument only to the extent that the Commission,
9 by rule, determines after consultation with the Prudential
10 Regulators and the Secretary of the Treasury, that the
11 purchase or sale of the security-based swap or other deriv-
12 ative instrument, or class of security-based swaps or other
13 derivative instruments, provides incidents of ownership
14 comparable to direct ownership of the equity security, and
15 that it is necessary to achieve the purposes of this section
16 that the purchase or sale of the security-based swaps or
17 instrument, or class of security-based swap or instru-
18 ments, be deemed the acquisition of beneficial ownership
19 of the equity security.”.

20 **SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.**

21 Section 28(a) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78bb(a)) is amended to read as follows:

23 “(a) Except as provided in subsection (f), the rights
24 and remedies provided by this title shall be in addition
25 to any and all other rights and remedies that may exist

1 at law or in equity; but no person permitted to maintain
2 a suit for damages under the provisions of this title shall
3 recover, through satisfaction of judgment in one or more
4 actions, a total amount in excess of his actual damages
5 on account of the act complained of. Except as otherwise
6 specifically provided in this title, nothing in this title shall
7 affect the jurisdiction of the securities commission (or any
8 agency or officer performing like functions) of any State
9 over any security or any person insofar as it does not con-
10 flict with the provisions of this title or the rules and regu-
11 lations thereunder. No State law which prohibits or regu-
12 lates the making or promoting of wagering or gaming con-
13 tracts, or the operation of ‘bucket shops’ or other similar
14 or related activities, shall invalidate (1) any put, call,
15 straddle, option, privilege, or other security subject to this
16 title (except any security that has a pari-mutuel payout
17 or otherwise is determined by the Commission, acting by
18 rule, regulation, or order, to be appropriately subject to
19 such laws), or apply to any activity which is incidental or
20 related to the offer, purchase, sale, exercise, settlement,
21 or closeout of any such security, (2) any security-based
22 swap between eligible contract participants, or (3) any se-
23 curity-based swap effected on a national securities ex-
24 change registered pursuant to section 6(b). No provision
25 of State law regarding the offer, sale, or distribution of

1 securities shall apply to any transaction in a security-
 2 based swap or a security futures product, except that this
 3 sentence shall not be construed as limiting any State anti-
 4 fraud law of general applicability. A security-based swap
 5 may not be regulated as an insurance contract under State
 6 law.”.

7 **SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

8 **TREATMENT OF SECURITY-BASED SWAPS.**

9 (a) DEFINITIONS.—Section 2(a) of the Securities Act
 10 of 1933 (15 U.S.C. 77b(a)) is amended—

11 (1) in paragraph (1), by inserting “security-
 12 based swap,” after “security future,”;

13 (2) in paragraph (3) by adding at the end the
 14 following: “Any offer or sale of a security-based
 15 swap by or on behalf of the issuer of the securities
 16 upon which such security-based swap is based or is
 17 referenced, an affiliate of the issuer, or an under-
 18 writer, shall constitute a contract for sale of, sale of,
 19 offer for sale, or offer to sell such securities.”; and

20 (3) by adding at the end the following:

21 “(17) The terms ‘swap’ and ‘security-based
 22 swap’ have the same meanings as provided in sec-
 23 tions 1a(35) of the Commodity Exchange Act (7
 24 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
 25 ties Exchange Act of 1934.

1 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
2 rity-based swap shall be deemed to mean the execu-
3 tion, termination (prior to its scheduled maturity
4 date), assignment, exchange, or similar transfer or
5 conveyance of, or extinguishing of rights or obliga-
6 tions under, a security-based swap, as the context
7 may require.”.

8 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
9 of the Securities Act of 1933 is amended by adding at
10 the end the following:

11 “(15) Any security-based swap, as defined in
12 section 2(a)(17) that is not otherwise a security as
13 defined in section 2(a)(1) and that satisfies such
14 conditions as established by rule or regulation by the
15 Commission consistent with the provisions of the
16 Derivative Markets Transparency and Accountability
17 Act of 2009. The Commission shall promulgate rules
18 implementing this exemption.”.

19 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
20 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
21 is amended by adding at the end the following:

22 “(d) Notwithstanding the provisions of section 3 or
23 section 4, unless a registration statement meeting the re-
24 quirements of subsection (a) of section 10 is in effect as
25 to a security-based swap, it shall be unlawful for any per-

1 son, directly or indirectly, to make use of any means or
2 instruments of transportation or communication in inter-
3 state commerce or of the mails to offer to sell, offer to
4 buy or purchase or sell a security-based swap to any per-
5 son who is not an eligible contract participant as defined
6 in section 1a(12) of the Commodity Exchange Act (7
7 U.S.C. 1a(12)).”.

8 **SEC. 3208. OTHER AUTHORITY.**

9 Unless otherwise provided by its terms, this subtitle
10 does not divest any appropriate Federal banking agency,
11 the Commission, the Commodity Futures Trading Com-
12 mission, or other Federal or State agency, of any authority
13 derived from any other applicable law.

14 **SEC. 3209. JURISDICTION.**

15 (a) Section 36 of the Securities Exchange Act of
16 1934 (15 U.S.C. 78mm) is amended by adding at the end
17 the following new subsection:

18 “(c) DERIVATIVES.—The Commission shall not grant
19 exemptions from the security-based swap provisions of the
20 Derivative Markets Transparency and Accountability Act
21 of 2009, except as expressly authorized under the provi-
22 sions of that Act.”.

23 (b) Section 30 of the Securities Exchange Act of
24 1934 is amended by adding at the end the following:

1 “(c) No provision of this Act that was added by the
2 Derivative Markets Transparency and Accountability Act
3 of 2009 or any rule or regulation thereunder shall apply
4 to any person insofar as such person transacts a business
5 in security-based swaps without the jurisdiction of the
6 United States unless he transacts such business in con-
7 travention of such rules and regulations as the Commis-
8 sion may prescribe as necessary or appropriate to prevent
9 the evasion of any provision of this Act that was added
10 by the Derivative Markets Transparency and Account-
11 ability Act of 2009. This subsection shall not be construed
12 to limit the jurisdiction of the Commission under any pro-
13 vision of this Act as in effect prior to enactment of the
14 Derivative Markets Transparency and Accountability Act
15 of 2009.”.

16 **SEC. 3210. EFFECTIVE DATE.**

17 (a) Unless otherwise provided, the provisions of this
18 subtitle shall become effective the later of 270 days after
19 the date of the enactment of this subtitle or, to the extent
20 a provision of this subtitle requires rulemaking, no less
21 than 60 days after publication of a final rule or regulation
22 implementing such provision of this subtitle.

23 (b) Subsection (a) shall not preclude the Securities
24 Exchange Commission from any rulemaking required to
25 implement the provisions of this subtitle.

1 **Subtitle C—Improved Financial**
2 **and Commodity Markets Over-**
3 **sight and Accountability**

4 **SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL**
5 **TO APPOINTMENT PURSUANT TO SECTION 3**
6 **OF THE INSPECTOR GENERAL ACT OF 1978.**

7 (a) INCLUSION IN CERTAIN DEFINITIONS.—Section
8 12 of the Inspector General Act of 1978 (5 U.S.C. App.)
9 is amended—

10 (1) in paragraph (1), by striking “or the Fed-
11 eral Cochairpersons of the Commissions established
12 under section 15301 of title 40, United States
13 Code;” and inserting “the Federal Cochairpersons of
14 the Commissions established under section 15301 of
15 title 40, United States Code; the Chairman of the
16 Board of Governors of the Federal Reserve System;
17 the Chairman of the Commodity Futures Trading
18 Commission; the Chairman of the National Credit
19 Union Administration; the Director of the Pension
20 Benefit Guaranty Corporation; the Chairman of the
21 Securities and Exchange Commission; or the Direc-
22 tor of the Consumer Financial Protection Agency;”;
23 and

24 (2) in paragraph (2), by striking “or the Com-
25 missions established under section 15301 of title 40,

1 United States Code,” and inserting “the Commis-
2 sions established under section 15301 of title 40,
3 United States Code, the Board of Governors of the
4 Federal Reserve System, the Commodity Futures
5 Trading Commission, the National Credit Union Ad-
6 ministration, the Pension Benefit Guaranty Corpora-
7 tion, the Securities and Exchange Commission, or
8 the Director of the Consumer Financial Protection
9 Agency,”.

10 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
11 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
12 General Act of 1978 (5 U.S.C. App.) is amended—

13 (1) by striking “the Board of Governors of the
14 Federal Reserve System,”;

15 (2) by striking “the Commodity Futures Trad-
16 ing Commission,”;

17 (3) by striking “the National Credit Union Ad-
18 ministration,”; and

19 (4) by striking “the Pension Benefit Guaranty
20 Corporation, the Securities and Exchange Commis-
21 sion,”.

1 **SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO**
2 **PERSONNEL.**

3 (a) IN GENERAL.—The Inspector General Act of
4 1978 (5 U.S.C. App.) is amended by inserting after sec-
5 tion 8L the following:

6 **“SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
7 **TABLISHMENTS.**

8 “(a) DEFINITION.—For purposes of this section, the
9 term ‘covered establishment’ means the Board of Gov-
10 ernors of the Federal Reserve System, the Commodity Fu-
11 tures Trading Commission, the National Credit Union Ad-
12 ministration, the Pension Benefit Guaranty Corporation,
13 and the Securities and Exchange Commission.

14 “(b) PROVISIONS RELATING TO ALL COVERED ES-
15 TABLISHMENTS.—

16 “(1) PROVISIONS RELATING TO INSPECTORS
17 GENERAL.—In the case of the Inspector General of
18 a covered establishment, subsections (b) and (c) of
19 section 4 of the Inspector General Reform Act of
20 2008 (Public Law 110–409) shall apply in the same
21 manner as if such covered establishment were a des-
22 ignated Federal entity under section 8G. An Inspec-
23 tor General who is subject to the preceding sentence
24 shall not be subject to section 3(e).

25 “(2) PROVISIONS RELATING TO OTHER PER-
26 SONNEL.—Notwithstanding paragraphs (7) and (8)

1 of section 6(a), the Inspector General of a covered
2 establishment may select, appoint, and employ such
3 officers and employees as may be necessary for car-
4 rying out the functions, powers, and duties of the
5 Office of Inspector General of such establishment
6 and to obtain the temporary or intermittent services
7 of experts or consultants or an organization of ex-
8 perts or consultants, subject to the applicable laws
9 and regulations that govern such selections, appoint-
10 ments, and employment, and the obtaining of such
11 services, within such establishment.

12 “(c) PROVISION RELATING TO THE BOARD OF GOV-
13 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
14 visions of subsection (a) of section 8D (other than the pro-
15 visions of subparagraphs (A), (B), (C), and (E) of para-
16 graph (1) of such subsection (a)) shall apply to the Inspec-
17 tor General of the Board of Governors of the Federal Re-
18 serve System and the Chairman of the Board of Governors
19 of the Federal Reserve System in the same manner as
20 such provisions apply to the Inspector General of the De-
21 partment of the Treasury and the Secretary of the Treas-
22 ury, respectively.”.

23 (b) CONFORMING AMENDMENT.—Paragraph (3) of
24 section 8G(g) of the Inspector General Act of 1978 (5
25 U.S.C. App.) is repealed.

1 **SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CER-**
2 **TAIN ESTABLISHMENTS TO DEFICIENCIES**
3 **IDENTIFIED BY INSPECTORS GENERAL.**

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

10 (1) take action to address deficiencies identified
11 by a report or investigation of the Inspector General
12 of the establishment concerned; or

13 (2) certify to both Houses of Congress that no
14 action is necessary or appropriate in connection with
15 a deficiency described in paragraph (1).

16 **SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) **EFFECTIVE DATE.**—This subtitle and the amend-
18 ments made by this subtitle shall take effect 30 days after
19 the date of the enactment of this subtitle.

20 (b) **TRANSITION RULE.**—An individual serving as In-
21 spector General of the Board of Governors of the Federal
22 Reserve System, the Commodity Futures Trading Com-
23 mission, the National Credit Union Administration, the
24 Pension Benefit Guaranty Corporation, or the Securities
25 and Exchange Commission on the effective date of this
26 subtitle pursuant to an appointment made under section

1 8G of the Inspector General Act of 1978 (5 U.S.C.
2 App.)—

3 (1) may continue so serving until the President
4 makes an appointment under section 3(a) of such
5 Act with respect to the Board of Governors of the
6 Federal Reserve System, the Commodity Futures
7 Trading Commission, the National Credit Union Ad-
8 ministration, the Pension Benefit Guaranty Corpora-
9 tion, or the Securities and Exchange Commission, as
10 the case may be, consistent with the amendments
11 made by section 301; and

12 (2) shall, while serving under paragraph (1), re-
13 main subject to the provisions of section 8G of such
14 Act which, immediately before the effective date of
15 this subtitle, applied with respect to the Inspector
16 General of the Board of Governors of the Federal
17 Reserve System, the Commodity Futures Trading
18 Commission, the National Credit Union Administra-
19 tion, the Pension Benefit Guaranty Corporation, or
20 the Securities and Exchange Commission, as the
21 case may be, and suffer no reduction in pay.

1 **SEC. 3305. AUTHORITY OF THE COMMODITY FUTURES**
 2 **TRADING COMMISSION TO DEFINE “COMMER-**
 3 **CIAL RISK”, “OPERATING RISK”, AND “BAL-**
 4 **ANCE SHEET RISK”.**

5 (a) IN GENERAL.—Section 1a of the Commodity Ex-
 6 change Act (7 U.S.C. 1a), as amended by the preceding
 7 provisions of this Act, is amended by adding at the end
 8 the following:

9 “(51) COMMERCIAL RISK; OPERATING RISK;
 10 BALANCE SHEET RISK.—The terms ‘commercial
 11 risk’, ‘operating risk’, and ‘balance sheet risk’ shall
 12 have such meanings as the Commission may pre-
 13 scribe.”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 subsection (a) shall take effect as if included in subtitle
 16 A.

17 **SEC. 3306. CONFLICTS OF INTEREST IN CLEARING ORGANI-**
 18 **ZATIONS.**

19 (a) COMMODITY EXCHANGE ACT.—

20 (1) DEFINITION OF RESTRICTED OWNER.—Sec-
 21 tion 1a of the Commodity Exchange Act (7 U.S.C.
 22 1a) (as amended by the preceding provisions of this
 23 Act) is further amended by adding at the end the
 24 following:

25 “(51) RESTRICTED OWNER.—The term ‘re-
 26 stricted owner’ means any swap dealer, security-

1 based swap dealer, major swap participant, or major
2 security-based swap participant, that is an identified
3 financial holding company as defined in Section
4 1000(b)(5) of the Financial Stability Improvement
5 Act of 2009, or a person associated with a swap
6 dealer or a major swap participant that is an identi-
7 fied financial holding company, or a person associ-
8 ated with a security-based swap dealer or major se-
9 curity-based swap participant that is an identified fi-
10 nancial holding company.”.

11 (2) CONFLICTS OF INTEREST.—

12 (A) Subparagraph (P) of section 5b(c)(2)
13 of the Commodity Exchange Act (as added by
14 the preceding provisions of this Act) is amended
15 by adding at the end of such subparagraph the
16 following: “The rules of the derivatives clearing
17 organization that clears swaps shall provide
18 that a restricted owner shall not be permitted
19 directly or indirectly to acquire beneficial own-
20 ership of interests in the organization or in per-
21 sons with a controlling interest in the organiza-
22 tion, to the extent that such an acquisition
23 would result in restricted owners being entitled
24 to vote, cause the voting of, or cause the with-
25 holding of votes of, more than 20 percent of the

1 votes entitled to be cast on any matter by the
2 holders of the ownership interests. The rules of
3 the derivatives clearing organization shall pro-
4 vide that a majority of the directors of the or-
5 ganization shall not be associated with a re-
6 stricted owner. This subparagraph shall not be
7 construed to require divestiture of any interest
8 of a restricted owner in an established and
9 operational derivatives clearing organization ac-
10 quired prior to January 1, 2010, provided that
11 acquisitions by such restricted owner after such
12 date shall be subject to this subparagraph. The
13 Commission may determine whether any acqui-
14 sition by a restricted owner during any interim
15 period prior to the date of the enactment of this
16 Act has been made for the purpose of avoiding
17 the effect of this subparagraph.”.

18 (B) Section 4s(g)(1) of the Commodity Ex-
19 change Act (as added by the preceding provi-
20 sions of this Act) is amended—

- 21 (i) by striking “and” at the end of
22 subparagraph (C); and
23 (ii) by redesignating subparagraph
24 (D) as subparagraph (E) and insert after
25 subparagraph (C) the following:

1 “(D) the prevention of self-dealing, by lim-
2 iting the extent to which such a swap dealer or
3 major swap participant may conduct business
4 with a derivatives clearing organization, a board
5 of trade, or an alternative swap execution facil-
6 ity that clears or trades swaps and in which
7 such a swap dealer or major swap participant
8 has a material debt or equity investment; and”.

9 (C) Paragraph (12) of section 5h(d) of the
10 Commodity Exchange Act (as added by the pre-
11 ceding provisions of this Act) is amended by
12 adding at the end the following new subpara-
13 graph:

14 “(C) The rules of the swap execution facil-
15 ity shall provide that a restricted owner shall
16 not be permitted directly or indirectly to ac-
17 quire beneficial ownership of interests in the fa-
18 cility or in persons with a controlling interest in
19 the facility, to the extent that such an acquisi-
20 tion would result in restricted owners being en-
21 titled to vote, cause the voting of, or cause the
22 withholding of votes of, more than 20 percent
23 of the votes entitled to be cast on any matter
24 by the holders of the ownership interests. This
25 subparagraph shall not be construed to require

1 divestiture of any interest of a restricted owner
2 in an established and operational swap execu-
3 tion facility acquired prior to January 1, 2010,
4 provided that acquisitions by such restricted
5 owner after such date shall be subject to this
6 subparagraph. The Commission may determine
7 whether any acquisition by a restricted owner
8 during any interim period prior to the date of
9 the enactment of this Act has been made for
10 the purpose of avoiding the effect of this sub-
11 paragraph.

12 “(D) The rules of the swap execution facil-
13 ity shall provide that a majority of the directors
14 of the facility shall not be associated with a re-
15 stricted owner.”.

16 (D) Section 5(d) of the Commodity Ex-
17 change Act (as amended by the preceding provi-
18 sions of this Act) is further amended by strik-
19 ing paragraph (15) and inserting the following:

20 “(15) CONFLICTS OF INTEREST.—

21 “(A) The board of trade shall establish
22 and enforce rules to minimize conflicts of inter-
23 est in the decisionmaking process of the con-
24 tract market, and establish a process for resolv-
25 ing any such conflicts of interest.

1 “(B) The rules of a board of trade that
2 trades swaps shall provide that a restricted
3 owner shall not be permitted directly or indi-
4 rectly to acquire beneficial ownership of inter-
5 ests in the board of trade or in persons with a
6 controlling interest in the board of trade, to the
7 extent that such an acquisition would result in
8 restricted owners being entitled to vote, cause
9 the voting of, or cause the withholding of votes
10 of, more than 20 percent of the votes entitled
11 to be cast on any matter by the holders of the
12 ownership interests. This paragraph shall not
13 be construed to require divestiture of any inter-
14 est of a restricted owner in an established and
15 operational board of trade acquired prior to
16 January 1, 2010, provided that acquisitions by
17 such restricted owner after such date shall be
18 subject to this paragraph. The Commission may
19 determine whether any acquisition by a re-
20 stricted owner during any interim period prior
21 to the date of the enactment of this Act has
22 been made for the purpose of avoiding the ef-
23 fect of this paragraph.

24 “(C) The rules of a board of trade that
25 trades swaps shall provide that a majority of

1 the directors of the board of trade shall not be
2 associated with a restricted owner.”.

3 (b) SECURITIES EXCHANGE ACT OF 1934.—

4 (1) DEFINITION OF RESTRICTED OWNER.—Sec-
5 tion 3(a) of the Securities Exchange Act of 1934
6 (15 U.S.C. 78c(a)) (as amended by the preceding
7 provisions of this Act) is further amended by adding
8 at the end the following:

9 “(78) RESTRICTED OWNER.—The term ‘re-
10 stricted owner’ has the same meaning as in section
11 1a(51) of the Commodity Exchange Act.”.

12 (2) CONFLICTS OF INTEREST.—

13 (A) Paragraph (10) of section 3C(d) of the
14 Securities Exchange Act of 1934 (as added by
15 the preceding provisions of this Act) is amended
16 by adding after subparagraph (B) the following:

17 “The rules of the swap execution facility shall provide that
18 a restricted owner shall not be permitted directly or indi-
19 rectly to acquire beneficial ownership of interests in the
20 facility or in persons with a controlling interest in the fa-
21 cility, to the extent that such an acquisition would result
22 in restricted owners being entitled to vote, cause the voting
23 of, or cause the withholding of votes of, more than 20 per-
24 cent of the votes entitled to be cast on any matter by the
25 holders of the ownership interests. The rules of the swap

1 execution facility shall provide that a majority of the direc-
2 tors of the facility shall not be associated with a restricted
3 owner. This paragraph shall not be construed to require
4 divestiture of any interest of a restricted owner in an es-
5 tablished and operational swap execution facility acquired
6 prior to January 1, 2010, provided that acquisitions by
7 such restricted owner after such date shall be subject to
8 this paragraph. The Commission may determine whether
9 any acquisition by a restricted owner during any interim
10 period prior to the date of the enactment of this Act has
11 been made for the purpose of avoiding the effect of this
12 paragraph.”.

13 (B) Section 15F(g)(1) of the Securities
14 Exchange Act of 1934 (as added by the pre-
15 ceding provisions of this Act) is amended—

16 (i) in subparagraph (C), strike “and”;

17 and

18 (ii) insert after subparagraph (C) the
19 following (and redesignate the succeeding
20 subparagraph accordingly):

21 “(D) the prevention of self-dealing by lim-
22 iting the extent to which a security-based swap
23 dealer or major security-based swap participant
24 may conduct business with a clearing agency,
25 an exchange, or an alternative swap execution

1 facility that clears or trades security-based
2 swaps and in which such a dealer or participant
3 has a material debt or equity investment; and”.

4 (C) Section 6(b) of the Securities Ex-
5 change Act of 1934 (15 U.S.C. 78f(b)) is
6 amended by adding at the end the following
7 new paragraphs:

8 “(10) The rules of the exchange minimize con-
9 flicts of interest in its decision-making process and
10 establish a process for resolving such conflicts of in-
11 terest.

12 “(11) The rules of an exchange that trades se-
13 curity-based swaps provide that a majority of the di-
14 rectors of the exchange shall not be associated with
15 a restricted owner.

16 “(12) The rules of an exchange that trades se-
17 curity-based swaps provide that a restricted owner
18 shall not be permitted directly or indirectly to ac-
19 quire beneficial ownership of interests in the ex-
20 change or in persons with a controlling interest in
21 the exchange, to the extent that such an acquisition
22 would result in restricted owners being entitled to
23 vote, cause the voting of, or cause the withholding
24 of votes of, more than 20 percent of the votes enti-
25 tled to be cast on any matter by the holders of the

1 ownership interests. This paragraph shall not be
2 construed to require divestiture of any interest of a
3 restricted owner in an established and operational
4 exchange acquired prior to January 1, 2010, pro-
5 vided that acquisitions by such restricted owner
6 after such date shall be subject to this paragraph.
7 The Commission may determine whether any acqui-
8 sition by a restricted owner during any interim pe-
9 riod prior to the date of the enactment of this Act
10 has been made for the purpose of avoiding the effect
11 of this paragraph.”.

12 (D) Section 17A(b)(3) of the Securities
13 Exchange Act of 1934 (15 U.S.C. 78f(b)) is
14 amended by adding at the end the following
15 new subparagraphs:

16 “(J) The rules of a clearing agency that
17 clears security-based swaps shall provide that a
18 restricted owner shall not be permitted directly
19 or indirectly to acquire beneficial ownership of
20 interests in the agency or in persons with a con-
21 trolling interest in the agency, to the extent
22 that such an acquisition would result in re-
23 stricted owners being entitled to vote, cause the
24 voting of, or cause the withholding of votes of,
25 more than 20 percent of the votes entitled to be

1 cast on any matter by the holders of the owner-
2 ship interests. This subparagraph shall not be
3 construed to require divestiture of any interest
4 of a restricted owner in an established and
5 operational clearing agency acquired prior to
6 January 1, 2010, provided that acquisitions by
7 such restricted owner after such date shall be
8 subject to this subparagraph. The Commission
9 may determine whether any acquisition by a re-
10 stricted owner during any interim period prior
11 to the date of the enactment of this Act has
12 been made for the purpose of avoiding the ef-
13 fect of this subparagraph.

14 “(K) The rules of the clearing agency shall
15 provide that a majority of the directors of the
16 agency shall not be associated with a restricted
17 owner.”.

18 **SEC. 3307. DEFINITIONS OF MAJOR SWAP PARTICIPANT**
19 **AND MAJOR SECURITY-BASED SWAP PARTICI-**
20 **PANT.**

21 (a) MAJOR SWAP PARTICIPANT.—Section 1a(39) of
22 the Commodity Exchange Act (7 U.S.C. 1a), as added by
23 the preceding provisions of this Act, is amended to read
24 as follows:

25 “(39) MAJOR SWAP PARTICIPANT.—

1 “(A) IN GENERAL.—The term ‘major swap
2 participant’ means any person who is not a
3 swap dealer, and—

4 “(i) maintains a substantial net posi-
5 tion in outstanding swaps, excluding posi-
6 tions held primarily for hedging, reducing
7 or otherwise mitigating its commercial
8 risk; or

9 “(ii) whose outstanding swaps create
10 substantial net counterparty exposure that
11 could have serious adverse effects on the
12 financial stability of the United States
13 banking system or financial markets.

14 “(B) DEFINITION OF SUBSTANTIAL NET
15 POSITION.—The Commission shall define by
16 rule or regulation the term ‘substantial net po-
17 sition’ at a threshold that the Commission de-
18 termines prudent for the effective monitoring,
19 management, and oversight of entities which
20 are systemically important or can significantly
21 impact the financial system. In setting the defi-
22 nitions, the Commission shall consider the per-
23 son’s relative position in uncleared as opposed
24 to cleared swaps.

1 “(C) A person may be designated a major
2 swap participant for 1 or more individual types
3 of swaps without being classified as a major
4 swap participant for all classes of swaps.”.

5 (b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—
6 Section 3(a)(67) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78c(a)), as added by the preceding provisions
8 of this Act, is amended to read as follows:

9 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
10 PANT.—

11 “(A) IN GENERAL.—The term ‘major secu-
12 rity-based swap participant’ means any person
13 who is not a security-based swap dealer, and—

14 “(i) maintains a substantial net posi-
15 tion in outstanding security-based swaps,
16 excluding positions held primarily for hedg-
17 ing, reducing or otherwise mitigating its
18 commercial risk; or

19 “(ii) whose outstanding security-based
20 swaps create substantial net counterparty
21 exposure that could have serious adverse
22 effects on the financial stability of the
23 United States banking system or financial
24 markets.

1 “(B) DEFINITION OF SUBSTANTIAL NET
2 POSITION.—The Commission shall define by
3 rule or regulation the term ‘substantial net po-
4 sition’ at a threshold that the Commission de-
5 termines prudent for the effective monitoring,
6 management, and oversight of entities which
7 are systemically important or can significantly
8 impact the financial system. In setting the defi-
9 nitions, the Commission shall consider the per-
10 son’s relative position in uncleared as opposed
11 to cleared security-based swaps.

12 “(C) A person may be designated a major
13 security-based swap participant for 1 or more
14 individual types of security-based swaps without
15 being classified as a major security-based swap
16 participant for all classes of security-based
17 swaps.”.

18 (c) EFFECTIVE DATES.—

19 (1) MAJOR SWAP PARTICIPANT.—The amend-
20 ment made by subsection (a)(1) shall take effect as
21 if included in subtitle A.

22 (2) MAJOR SECURITY-BASED SWAP PARTICI-
23 PANT.—The amendment made by subsection (a)(2)
24 shall take effect as if included in subtitle B.

1 **TITLE IV—CONSUMER FINAN-**
2 **CIAL PROTECTION AGENCY**
3 **ACT**

4 **SEC. 4001. SHORT TITLE.**

5 This title may be cited as the “Consumer Financial
6 Protection Agency Act of 2009”.

7 **SEC. 4002. DEFINITIONS.**

8 For the purposes of subtitles A through F of this
9 title, the following definitions shall apply:

10 (1) **AFFILIATE.**—The term “affiliate” means
11 any person that controls, is controlled by, or is
12 under common control with another person.

13 (2) **AGENCY.**—The term “Agency” means—

14 (A) before the Agency conversion date, the
15 Consumer Financial Protection Agency; and

16 (B) on and after the Agency conversion
17 date, the commission established under section
18 4103.

19 (3) **BANK HOLDING COMPANY.**—The term
20 “bank holding company” has the same meaning as
21 in section 2(a) of the Bank Holding Company Act
22 of 1956.

23 (4) **BOARD.**—Except when used in connection
24 with the term “Board of Governors”, the term

1 “Board” means the Consumer Financial Protection
2 Oversight Board.

3 (5) BOARD OF GOVERNORS.—The term “Board
4 of Governors” means the Board of Governors of the
5 Federal Reserve System.

6 (6) BUSINESS OF INSURANCE.—The term
7 “business of insurance” means the writing of insur-
8 ance or the reinsuring of risks by an insurer, includ-
9 ing all acts necessary to such writing or reinsuring
10 and the activities relating to the writing of insurance
11 or the reinsuring of risks conducted by persons who
12 act as, or are, officers, directors, agents, or employ-
13 ees of insurers or who are other persons authorized
14 to act on behalf of such persons.

15 (7) CONSUMER.—The term “consumer” means
16 an individual or an agent, trustee, or representative
17 acting on behalf of an individual.

18 (8) CONSUMER FINANCIAL PRODUCT OR SERV-
19 ICE.—The term “consumer financial product or
20 service” means any financial product, other than a
21 Federal tax return, or service to be used by a con-
22 sumer primarily for personal, family, or household
23 purposes.

24 (9) COVERED PERSON.—

1 (A) IN GENERAL.—The term “covered per-
2 son” means any person who engages directly or
3 indirectly in a financial activity, in connection
4 with the provision of a consumer financial prod-
5 uct or service.

6 (B) EXCLUSION.—The term “covered per-
7 son” shall not include the Secretary, the De-
8 partment of the Treasury, any agency or bu-
9 reau under the jurisdiction of the Secretary, or
10 any person collecting Federal taxes for the
11 United States to the extent such person is act-
12 ing in such capacity.

13 (10) CREDIT.—The term “credit” means the
14 right granted by a person to a consumer to defer
15 payment of a debt, incur debt and defer its payment,
16 or purchase property or services and defer payment
17 for such purchase.

18 (11) CREDIT UNION.—The term “credit union”
19 means a Federal credit union or a State credit union
20 as defined in section 101 of the Federal Credit
21 Union Act.

22 (12) DEPOSIT.—The term “deposit”—

23 (A) has the same meaning as in section
24 3(l) of the Federal Deposit Insurance Act; and

1 (B) includes a share in a member account
2 (as defined in section 101(5) of the Federal
3 Credit Union Act) at a credit union.

4 (13) DEPOSIT-TAKING, MONEY ACCEPTANCE,
5 OR MONEY MOVEMENT ACTIVITY.—The term “de-
6 posit-taking, money acceptance, or money movement
7 activities” means—

8 (A) the acceptance of deposits, the mainte-
9 nance of deposit accounts, or the provision of
10 services related to the acceptance of deposits;

11 (B) the acceptance of money, the provision
12 of other services related to the acceptance of
13 money, or the maintenance of members’ share
14 accounts by a credit union; or

15 (C) the receipt of money or its equivalent,
16 as the Director may determine by regulation or
17 order, received or held by the covered person
18 (or an agent for the person) for the purpose of
19 facilitating a payment or transferring funds or
20 value of funds by a consumer to a third party.

21 (14) DESIGNATED TRANSFER DATE.—The term
22 “designated transfer date” has the meaning pro-
23 vided in section 4602.

24 (15) DIRECTOR.—The term “Director”
25 means—

1 (A) before the Agency conversion date, the
2 Director of the Agency; and

3 (B) on and after the Agency conversion
4 date, the commission established under section
5 4103.

6 (16) ENUMERATED CONSUMER LAWS.—The
7 term “enumerated consumer laws” means each of
8 the following:

9 (A) The Alternative Mortgage Transaction
10 Parity Act (12 U.S.C. 3801 et seq.).

11 (B) The Electronic Funds Transfer Act
12 (15 U.S.C. 1693 et seq.).

13 (C) The Equal Credit Opportunity Act (15
14 U.S.C. 1691 et seq.).

15 (D) The Fair Credit Reporting Act (15
16 U.S.C. 1681 et seq.), except with respect to sec-
17 tions 615(e) and 628 of such Act.

18 (E) The Fair Debt Collection Practices Act
19 (15 U.S.C. 1692 et seq.).

20 (F) Subsections (b), (c), (d), (e), and (f) of
21 section 43 of the Federal Deposit Insurance Act
22 (12 U.S.C. 1831t).

23 (G) Sections 502, 503, 504, 505, 506,
24 507, 508, and 509 of the Gramm-Leach-Bliley

1 Act (15 U.S.C. 6802 et seq.) except for section
2 505 as it applies to section 501(b).

3 (H) The Homeowners Protection Act of
4 1998.

5 (I) The Home Mortgage Disclosure Act
6 (12 U.S.C. 2801 et seq.).

7 (J) The Real Estate Settlement Proce-
8 dures Act (12 U.S.C. 2601 et seq.).

9 (K) The Secure and Fair Enforcement for
10 Mortgage Licensing Act (12 U.S.C. 5101 et
11 seq.).

12 (L) The Truth in Lending Act (15 U.S.C.
13 1601 et seq.).

14 (M) The Truth in Savings Act (12 U.S.C.
15 4301 et seq.).

16 (N) Section 626 of the Omnibus Appro-
17 priations Act, 2009 (Public Law 111–8).

18 (O) The Unlawful Internet Gambling En-
19 forcement Act of 2006.

20 (17) FEDERAL BANKING AGENCY.—The term
21 “Federal banking agency” means the Board of Gov-
22 ernors, the Comptroller of the Currency, the Direc-
23 tor of the Office of Thrift Supervision, the Federal
24 Deposit Insurance Corporation, or the National

1 Credit Union Administration and the term “Federal
2 banking agencies” means all of such agencies.

3 (18) FAIR LENDING.—The term “fair lending”
4 means fair, equitable, and nondiscriminatory access
5 to credit for both individuals and communities.

6 (19) FINANCIAL ACTIVITY.—

7 (A) IN GENERAL.—The term “financial ac-
8 tivity” means any of the following activities:

9 (i) Deposit-taking, money acceptance,
10 or money movement activities.

11 (ii) Extending credit and servicing
12 loans, including—

13 (I) acquiring, purchasing, selling,
14 brokering, or servicing loans or other
15 extensions of credit; and

16 (II) engaging in any other activ-
17 ity usual in connection with extensions
18 of credit or servicing loans, including
19 performing appraisals of real estate
20 and personal property.

21 (iii) Check cashing and check-guar-
22 anty services, including—

23 (I) authorizing a subscribing
24 merchant to accept personal checks
25 tendered by the merchant’s customers

1 in payment for goods and services;
2 and

3 (II) purchasing from a sub-
4 scribing merchant validly authorized
5 checks that are subsequently dishon-
6 ored.

7 (iv) Collecting, analyzing, maintain-
8 ing, and providing consumer report infor-
9 mation or other account information by
10 covered persons, including information re-
11 lating to the credit history of consumers
12 and providing the information to a credit
13 grantor who is considering a consumer ap-
14 plication for credit or who has extended
15 credit to the borrower, except that fur-
16 nishing a consumer report to another per-
17 son that it has reason to believe intends to
18 use the information for employment pur-
19 poses, including for security investigations,
20 government licensing and evaluating a con-
21 sumer's residential or tenant history shall
22 not be considered a financial activity.

23 (v) Collection of debt related to any
24 consumer financial product or service.

1 (vi) Providing real estate settlement
2 services.

3 (vii) Leasing personal or real property
4 or acting as agent, broker, or adviser in
5 leasing such property if—

6 (I) the lease is on a non-oper-
7 ating basis;

8 (II) the initial term of the lease
9 is at least 90 days; and

10 (III) in the case of leases involv-
11 ing real property, at the inception of
12 the initial lease, the transaction is in-
13 tended to result in ownership of the
14 leased property to be transferred to
15 the lessee, subject to standards pre-
16 scribed by the Director.

17 (viii) Acting as an investment adviser
18 to any person (excluding an investment ad-
19 viser that is a person regulated by the
20 Commodity Futures Trading Commission,
21 the Securities and Exchange Commission,
22 or a person regulated as an investment ad-
23 viser by any securities commission (or any
24 agency or office performing like functions)
25 of any State).

1 (ix) Acting as financial adviser to any
2 person (excluding an investment adviser
3 that is a person regulated by the Com-
4 modity Futures Trading Commission, the
5 Securities and Exchange Commission, or
6 any securities commission (or any agency
7 or office performing like functions) of any
8 State), including—

9 (I) providing financial and other
10 related advisory services;

11 (II) providing educational
12 courses, and instructional materials to
13 consumers on individual financial
14 management matters;

15 (III) providing credit counseling
16 or tax planning services to any person
17 (excluding the preparation of returns,
18 or claims for refund, of tax imposed
19 by the Internal Revenue Code or ad-
20 vice with respect to positions taken
21 therein, or services regulated by the
22 Secretary of the Treasury under sec-
23 tion 330 of title 31, United States
24 Code); or

1 (IV) providing services to assist a
2 consumer with debt management or
3 debt settlement, with modifying the
4 terms of any extension of credit, or
5 with avoiding foreclosure.

6 (x) For purposes of this title, the fol-
7 lowing shall not be considered acting as fi-
8 nancial adviser:

9 (I) Publishing any bona fide
10 newspaper, news magazine or business
11 or financial publication of general and
12 regular circulation, including pub-
13 lishing market data, news, or data
14 analytics or investment information or
15 recommendations that are not tailored
16 to the individual needs of a particular
17 consumer.

18 (II) Providing advice, analyses,
19 or reports that do not relate to any
20 securities other than securities which
21 are direct obligations of or obligations
22 guaranteed as to principal or interest
23 by the United States, or securities
24 issued or guaranteed by corporations
25 in which the United States has a di-

1 rect or indirect interest which shall
2 have been designated by the Secretary
3 of the Treasury, pursuant to section
4 3(a)(12) of the Securities Exchange
5 Act of 1934, as exempted securities
6 for the purposes of that Act.

7 (xi) Financial data processing by any
8 technological means, including providing
9 data processing, access to or use of data-
10 bases or facilities, or advice regarding
11 processing or archiving, if the data to be
12 processed, furnished, stored, or archived
13 are financial, banking, or economic, except
14 that it shall not be considered a “financial
15 activity” with respect to financial data
16 processing—

17 (I) to the extent the person is
18 providing interactive computer service,
19 as defined in section 230 of the Com-
20 munications Act of 1934 (47 U.S.C.
21 230); or

22 (II) if the person—

23 (aa) unknowingly or inciden-
24 tally transmits, processes, or
25 stores financial data in a manner

1 that such data is undifferentiated
2 from other types of data that the
3 person transmits, processes, or
4 stores;

5 (bb) does not provide to any
6 consumer a consumer financial
7 product or service in connection
8 with or relating to in any manner
9 financial data processing; and

10 (cc) does not provide a ma-
11 terial service to any covered per-
12 son in connection with the provi-
13 sion of a consumer financial
14 product or service.

15 (xii) Money transmitting.

16 (xiii) Sale, provision or issuance of
17 stored value, except that, in the case of a
18 sale, only if the seller influences the terms
19 or conditions of the stored value provided
20 to the consumer.

21 (xiv) Acting as a money services busi-
22 ness.

23 (xv) Acting as a custodian of money
24 or any financial instrument.

1 (xvi)(I) Any other activity that the Di-
2 rector defines, by regulation, as a financial
3 activity after finding that—

4 (aa) the activity is financial
5 in nature or is otherwise a per-
6 missible activity for a bank or
7 bank holding company, including
8 a financial holding company,
9 under any provision of Federal
10 law or regulation applicable to a
11 bank or bank holding company,
12 including a financial holding
13 company;

14 (bb) the activity is incidental
15 or complementary to any other fi-
16 nancial activity regulated by the
17 Agency; or

18 (cc) the activity is entered
19 into or conducted as a subterfuge
20 or with a purpose to evade any
21 requirement under this title, the
22 enumerated consumer laws, and
23 the authorities transferred under
24 subtitles F and H.

1 (II) For purposes of subclause (I)(bb),
2 the following activities provided to a cov-
3 ered person shall not be “incidental or
4 complementary”:

5 (aa) Providing information prod-
6 ucts or services to a covered person
7 for identity authentication.

8 (bb) Providing information prod-
9 ucts or services for fraud or identify
10 theft detection, prevention, or inves-
11 tigation.

12 (cc) Providing document retrieval
13 or delivery services.

14 (dd) Providing public records in-
15 formation retrieval.

16 (ee) Providing information prod-
17 ucts or services for anti-money laun-
18 dering activities.

19 (B) EXCEPTIONS.—The term “financial
20 activity” shall not include the business of insur-
21 ance or the provision of electronic data trans-
22 mission, routing, intermediate or transient stor-
23 age, or connections to a system or network,
24 where the person providing such services does
25 not select or modify the content of the elec-

1 tronic data, is not the sender or the intended
2 recipient of the data, and such person trans-
3 mits, routes, stores, or provides connections for
4 electronic data, including financial data, in a
5 manner that such financial data is undifferen-
6 tiated from other types of data that such per-
7 son transmits, routes, stores, or provides con-
8 nections.

9 (20) FINANCIAL PRODUCT OR SERVICE.—The
10 term “financial product or service” means any prod-
11 uct or service that, directly or indirectly, results
12 from or is related to engaging in 1 or more financial
13 activities.

14 (21) FOREIGN EXCHANGE.—The term “foreign
15 exchange” means the exchange, for compensation, of
16 currency of the United States or of a foreign govern-
17 ment for currency of another government.

18 (22) INSURED CREDIT UNION.—The term “in-
19 sured credit union” has the same meaning as in sec-
20 tion 101 of the National Credit Union Act.

21 (23) INSURED DEPOSITORY INSTITUTION.—The
22 term “insured depository institution” has the same
23 meaning as in section 3 of the Federal Deposit In-
24 surance Act and shall include any uninsured branch

1 or agency of a foreign bank or a commercial lending
2 company owned or controlled by a foreign bank.

3 (24) MONEY SERVICES BUSINESS.—The term
4 “money services business” means a person that—

5 (A) receives currency, monetary value, or
6 payment instruments for the purpose of ex-
7 changing or transmitting the same by any
8 means, including transmission by wire, fac-
9 simile, electronic transfer, courier, the Internet,
10 or through bill payment services, or other busi-
11 nesses that facilitate third-party transfers with-
12 in the United States or to or from the United
13 States; or

14 (B) issues payment instruments or stored
15 value.

16 (25) MONEY TRANSMITTING.—The term
17 “money transmitting” means the receipt by a person
18 of currency, monetary value, or payment instru-
19 ments for the purpose of transmitting the same to
20 any third-party by any means, including trans-
21 mission by wire, facsimile, electronic transfer, cou-
22 rier, the Internet, or through bill payment services.

23 (26) PAYMENT INSTRUMENT.—The term “pay-
24 ment instrument” means a check, draft, warrant,
25 money order, traveler’s check, electronic instrument,

1 or other instrument, payment of money, or monetary
2 value (other than currency).

3 (27) PERSON.—The term “person” means an
4 individual, partnership, company, corporation, asso-
5 ciation (incorporated or unincorporated), trust, es-
6 tate, cooperative organization, or other entity.

7 (28) PERSON REGULATED BY A STATE INSUR-
8 ANCE REGULATOR.—The term “person regulated by
9 a State insurance regulator” means any person who
10 is—

11 (A) engaged in the business of insurance;
12 and

13 (B) subject to regulation by any State in-
14 surance regulator,

15 but only to the extent that such person acts in such
16 capacity.

17 (29) PERSON REGULATED BY THE COMMODITY
18 FUTURES TRADING COMMISSION.—The term “person
19 regulated by the Commodity Futures Trading Com-
20 mission” means any futures commission merchant,
21 commodity trading adviser, commodity pool oper-
22 ator, introducing broker, boards of trade, derivatives
23 clearing organizations, multilateral clearing organi-
24 zations, retail foreign exchange dealer, or swap exe-
25 cution facility to the extent that such person’s ac-

1 tions are subject to the jurisdiction of the Com-
2 modity Futures Trading Commission under the
3 Commodity Exchange Act and any agent, employee,
4 or contractor acting on behalf of, registered with, or
5 providing services to such person but only to the ex-
6 tent the person, or the employee, agent, or con-
7 tractor of such person, acts in a registered capacity.

8 (30) PERSON REGULATED BY THE SECURITIES
9 AND EXCHANGE COMMISSION.—The term “person
10 regulated by the Securities and Exchange Commis-
11 sion” means—

12 (A) a broker or dealer that is required to
13 be registered under the Securities Exchange Act
14 of 1934;

15 (B) an investment adviser that is reg-
16 istered under the Investment Advisers Act of
17 1940;

18 (C) an investment company that—

19 (i) is required to be registered under
20 the Investment Company Act of 1940; or

21 (ii) is excepted from the definition of
22 investment company under section 3(c) of
23 such Act, or any successor provision;

1 (D) a national securities exchange that is
2 required to be registered under the Securities
3 Exchange Act of 1934;

4 (E) a transfer agent that is required to be
5 registered under the Securities Exchange Act of
6 1934;

7 (F) a clearing corporation that is required
8 to be registered under the Securities Exchange
9 Act of 1934;

10 (G) any municipal securities dealer that is
11 registered with the Securities and Exchange
12 Commission;

13 (H) any self-regulatory organization that is
14 registered with the Securities and Exchange
15 Commission;

16 (I) any national securities exchange or
17 other entity that is required to be registered
18 under the Securities Exchange Act of 1934;
19 and

20 (J) the Municipal Securities Rulemaking
21 Board,

22 and any employee, agent, or contractor acting on be-
23 half of, registered with, or providing services to, any
24 such person, but only to the extent that any person
25 described in any subparagraph of this paragraph, or

1 the employee agent, or contractor of such person,
2 acts in a registered capacity, or, with respect to a
3 person described in subparagraph (C)(ii), any em-
4 ployee, agent, or contractor acting on behalf of, or
5 providing services to any such person, but only to
6 the extent that such person, or the employee, agent,
7 or contractor of such person acts in such exempt ca-
8 pacity.

9 (31) PROVISION OF A CONSUMER FINANCIAL
10 PRODUCT OR SERVICE.—The terms “provision of a
11 consumer financial product or service” and “pro-
12 viding a consumer financial product or service”
13 mean the advertisement, marketing, solicitation,
14 sale, disclosure, delivery, or account maintenance or
15 servicing of a consumer financial product or service.

16 (32) PERSON THAT PERFORMS INCOME TAX
17 PREPARATION ACTIVITIES FOR CONSUMERS.—The
18 term “person that performs income tax preparation
19 activities for consumers” means—

20 (A) any tax return preparer (as defined in
21 section 7701(a)(36) of the Internal Revenue
22 Code of 1986), regardless of whether com-
23 pensated, but only to the extent that the person
24 acts in such capacity;

1 (B) any person regulated by the Secretary
2 of the Treasury under section 330 of title 31,
3 United States Code, but only to the extent that
4 the person acts in such capacity; and

5 (C) any authorized IRS e-file Providers (as
6 defined for purposes of section 7216 of the In-
7 ternal Revenue Code of 1986), but only to the
8 extent that the person acts in such capacity.

9 (33) RELATED PERSON.—

10 (A) IN GENERAL.—The term “related per-
11 son”, when used in connection with a covered
12 person that is not a bank holding company,
13 credit union, depository institution, means—

14 (i) any director, officer, employee
15 charged with managerial responsibility, or
16 controlling stockholder of, or agent for,
17 such covered person;

18 (ii) any shareholder, consultant, joint
19 venture partner, and any other person as
20 determined by the Director (by regulation
21 or on a case-by-case basis) who materially
22 participates in the conduct of the affairs of
23 such covered person; and

24 (iii) any independent contractor (in-
25 cluding any attorney, appraiser, or ac-

countant), with respect to such covered person, who knowingly or recklessly participates in any—

(I) violation of any law or regulation; or

(II) breach of fiduciary duty.

(B) TREATMENT OF A RELATED PERSON AS A COVERED PERSON.—Any person who is a related person under subparagraph (A) shall be deemed to be a covered person for all purposes of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H.

(34) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(35) SERVICE PROVIDER.—

(A) IN GENERAL.—The term “service provider” means any person who provides a material service to a covered person in the provision of a consumer financial product or service, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

1 (ii) has direct interaction with a con-
2 sumer (whether in person or via tele-
3 communication device or other similar
4 technology) regarding the consumer finan-
5 cial product or service; or

6 (iii) processes transactions relating to
7 the consumer financial product or service.

8 (B) EXCEPTIONS.—The term “service pro-
9 vider” shall not apply to a person solely by vir-
10 tue of such person providing or selling to a cov-
11 ered person—

12 (i) a support service of a type pro-
13 vided to businesses generally or a similar
14 ministerial service;

15 (ii) a service that does not materially
16 affect the terms or conditions of the con-
17 sumer financial product or service, its per-
18 formance or operation, or the propensity of
19 a consumer to obtain or use such product
20 or service; or

21 (iii) time or space for an advertise-
22 ment for a consumer financial product or
23 service through print, newspaper, or elec-
24 tronic media.

1 (36) STATE.—The term “State” means any
2 State, territory, or possession of the United States,
3 the District of Columbia, Commonwealth of Puerto
4 Rico, Commonwealth of the Northern Mariana Is-
5 lands, Guam, American Samoa, or the United States
6 Virgin Islands or any federally recognized Indian
7 tribe as defined by the Secretary of the Interior
8 under section 104(a) of the Federally Recognized In-
9 dian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

10 (37) STORED VALUE.—The term “stored
11 value”—

12 (A) means funds or monetary value rep-
13 resented in any electronic format, whether or
14 not specially encrypted, and stored or capable
15 of storage on electronic media in such a way as
16 to be retrievable and transferred electronically;
17 and

18 (B) includes a prepaid debit card or prod-
19 uct (other than a card or product used solely
20 for telephone services) or any other similar
21 product,
22 regardless of whether the amount of the funds or
23 monetary value may be increased or reloaded.

1 (38) AGENCY CONVERSION DATE.—The term
2 “Agency conversion date” means the date that is 2
3 years after the designated transfer date.

4 **Subtitle A—Establishment of the**
5 **Agency**

6 **SEC. 4101. ESTABLISHMENT OF THE CONSUMER FINANCIAL**
7 **PROTECTION AGENCY.**

8 (a) AGENCY ESTABLISHED.—There is established the
9 Consumer Financial Protection Agency as an independent
10 agency to regulate the provision of consumer financial
11 products or services under this title, the enumerated con-
12 sumer laws, and the authorities transferred under sub-
13 titles F and H.

14 (b) AGENCY STRUCTURE.—

15 (1) INITIAL STRUCTURE.—The Agency shall be
16 led by a Director or Acting Director, established
17 pursuant to section 4102, until the day before the
18 Agency conversion date.

19 (2) SUBSEQUENT STRUCTURE.—On and after
20 the Agency conversion date, the Agency shall consist
21 of the commission established under section 4103.

22 (c) PRINCIPAL OFFICE.—The principal office of the
23 Agency shall be located in the city of Washington, District
24 of Columbia, at 1 or more sites.

1 **SEC. 4102. DIRECTOR.**

2 (a) ESTABLISHMENT OF POSITION.—

3 (1) IN GENERAL.—There is hereby established
4 the position of the Director of the Agency who shall
5 be the head of the Agency.

6 (2) AUTHORITY TO PRESCRIBE REGULA-
7 TIONS.—The Director may prescribe such regula-
8 tions and issue such orders in accordance with this
9 title as the Director may determine to be necessary
10 for carrying out this title and all other laws within
11 the Director's jurisdiction and shall exercise any au-
12 thorities granted under this title and all other laws
13 within the Director's jurisdiction.

14 (b) APPOINTMENT; TERM.—

15 (1) NOMINATION.—Within 60 days after the
16 date of enactment of this title, the President shall
17 nominate the Director, from among individuals
18 who—

19 (A) are citizens of the United States; and

20 (B) have strong competencies and experi-
21 ences related to consumer financial protection.

22 (2) APPOINTMENT SUBJECT TO CONFIRMA-
23 TION.—The Director nominated under paragraph
24 (1) shall be appointed by and with the advice and
25 consent of the Senate.

1 (3) ACTING DIRECTOR BEFORE SENATE CON-
2 FIRMATION.—The individual nominated pursuant to
3 paragraph (1) shall serve as Acting Director with
4 full authorities granted to the Director under this
5 title until the Director is confirmed by the Senate.

6 (4) TERM.—The Director shall be appointed for
7 a term that ends on the Agency conversion date.

8 (5) REMOVAL.—The Director may be removed
9 before the end of a term only for cause.

10 (6) VACANCY.—

11 (A) IN GENERAL.—A vacancy in the posi-
12 tion of Director which occurs before the expira-
13 tion of the term for which a Director was ap-
14 pointed shall be filled in the manner established
15 in paragraph (2) and the Director appointed to
16 fill such vacancy shall be appointed only for the
17 remainder of such term.

18 (B) ACTING DIRECTOR.—

19 (i) IN GENERAL.—In the event of va-
20 cancy or during the absence of the Direc-
21 tor (who has been confirmed by the Senate
22 pursuant to paragraph (2)), an Acting Di-
23 rector shall be appointed in the manner
24 provided in section 3345 of title 5, United
25 States Code.

1 (ii) AUTHORITY OF ACTING DIREC-
 2 TOR.—Any individual serving as Acting Di-
 3 rector under this subparagraph shall be
 4 vested with all authority, duties, and privi-
 5 leges of the Director.

6 (7) SERVICE AFTER END OF TERM.—An indi-
 7 vidual may serve as Director after the expiration of
 8 the term for which appointed until a successor Di-
 9 rector has been appointed and qualified.

10 (c) PROHIBITION ON FINANCIAL INTERESTS.—The
 11 Director shall not have a direct or indirect financial inter-
 12 est in any covered person.

13 (d) COMPENSATION.—The Director shall receive com-
 14 pensation at the rate prescribed for Level I of the Execu-
 15 tive Schedule under section 5313 of title 5, United States
 16 Code.

17 **SEC. 4103. ESTABLISHMENT AND COMPOSITION OF THE**
 18 **COMMISSION.**

19 (a) ESTABLISHMENT OF THE COMMISSION.—

20 (1) IN GENERAL.—On the Agency conversion
 21 date, there shall be established a commission (here-
 22 inafter in this section referred to as the “Commis-
 23 sion”) that shall by operation of law succeed to all
 24 of the authorities of the Director of the Agency
 25 granted under this title and any other law.

1 (2) AUTHORITY TO PRESCRIBE REGULA-
2 TIONS.—The Commission may prescribe such regu-
3 lations and issue such orders in accordance with this
4 title as the Commission may determine to be nec-
5 essary for carrying out this title and all other laws
6 within the Commission’s jurisdiction and shall exer-
7 cise any authorities granted under this title and all
8 other laws within the Commission’s jurisdiction.

9 (b) COMPOSITION OF THE COMMISSION.—

10 (1) IN GENERAL.—The Commission shall be
11 composed of 5 members who shall be appointed by
12 the President, by and with the advice and consent
13 of the Senate, from among individuals who—

14 (A) are citizens of the United States; and

15 (B) have strong competencies and experi-
16 ences related to consumer financial protection.

17 (2) INITIAL APPOINTMENTS.—

18 (A) IN GENERAL.—The initial members of
19 the Commission, other than the initial Chair,
20 may be appointed by the President, by and with
21 the advice and consent of the Senate, prior to
22 the Agency conversion date, but may not serve
23 in their positions until such date.

24 (B) STAGGERING.—Except as provided
25 under subsection (d)(1), the members of the

1 Commission shall serve staggered terms, which
2 initially shall be established by the President
3 for terms of 1, 2, 4, and 5 years, respectively.

4 (3) TERMS.—

5 (A) IN GENERAL.—Except as provided in
6 subsection (d)(1), each member of the Commis-
7 sion, including the Chair, shall serve for a term
8 of 5 years.

9 (B) REMOVAL FOR CAUSE.—The President
10 may remove any member of the Commission
11 only for inefficiency, neglect of duty, or malfea-
12 sance in office.

13 (C) VACANCIES.—Any member of the
14 Commission appointed to fill a vacancy occur-
15 ring before the expiration of the term to which
16 that member's predecessor was appointed (in-
17 cluding the Chair) shall be appointed only for
18 the remainder of the term.

19 (D) CONTINUATION OF SERVICE.—Each
20 member of the Commission may continue to
21 serve after the expiration of the term of office
22 to which that member was appointed until a
23 successor has been appointed by the President
24 and confirmed by the Senate, except that a
25 member may not continue to serve more than 1

1 year after the date on which that member's
2 term would otherwise expire.

3 (E) OTHER EMPLOYMENT PROHIBITED.—

4 No member of the Commission shall engage in
5 any other business, vocation, or employment.

6 (c) AFFILIATION.—With respect to members ap-
7 pointed pursuant to subsection (b), not more than 3 shall
8 be members of any one political party.

9 (d) CHAIR OF THE COMMISSION.—

10 (1) APPOINTMENT.—

11 (A) INITIAL CHAIR.—The first Chair of the
12 Commission shall be the Director or Acting Di-
13 rector serving on the day before the Agency
14 conversion date, and such individual shall serve
15 in the position of Chair for a period of 3 years.

16 (B) SUBSEQUENT CHAIRS.—Subsequent
17 chairs shall be appointed by the President from
18 among the members of the Commission to serve
19 as the Chair.

20 (2) AUTHORITY.—The Chair shall be the prin-
21 cipal executive officer of the Agency, and shall exer-
22 cise all of the executive and administrative functions
23 of the Agency, including with respect to—

24 (A) the appointment and supervision of
25 personnel employed under the Agency (other

1 than personnel employed regularly and full time
2 in the immediate offices of members of the
3 Commission other than the Chair);

4 (B) the distribution of business among per-
5 sonnel appointed and supervised by the Chair
6 and among administrative units of the Agency;
7 and

8 (C) the use and expenditure of funds.

9 (3) LIMITATION.—In carrying out any of the
10 Chair's functions under the provisions of this sub-
11 section the Chair shall be governed by general poli-
12 cies of the Commission and by such regulatory deci-
13 sions, findings, and determinations as the Commis-
14 sion may by law be authorized to make.

15 (4) REQUESTS OR ESTIMATES RELATED TO AP-
16 PROPRIATIONS.—Requests or estimates for regular,
17 supplemental, or deficiency appropriations on behalf
18 of the Commission may not be submitted by the
19 Chair without the prior approval of the commission.

20 (e) NO IMPAIRMENT BY REASON OF VACANCIES.—
21 No vacancy in the members of the Commission shall im-
22 pair the right of the remaining members of the Commis-
23 sion to exercise all the powers of the Commission. Three
24 members of the Commission shall constitute a quorum for
25 the transaction of business, except that if there are only

1 3 members serving on the Commission because of vacan-
2 cies in the Commission, 2 members of the Commission
3 shall constitute a quorum for the transaction of business.
4 If there are only 2 members serving on the Commission
5 because of vacancies in the Commission, 2 members shall
6 constitute a quorum for the 6-month period beginning on
7 the date of the vacancy which caused the number of Com-
8 mission members to decline to 2.

9 (f) SEAL.—The Commission shall have an official
10 seal.

11 (g) COMPENSATION.—

12 (1) CHAIR.—The Chair shall receive compensa-
13 tion at the rate prescribed for level I of the Execu-
14 tive Schedule under section 5313 of title 5, United
15 States Code.

16 (2) OTHER MEMBERS OF THE COMMISSION.—
17 The 4 other members of the Commission shall each
18 receive compensation at the rate prescribed for level
19 II of the Executive Schedule under section 5314 of
20 title 5, United States Code.

21 (h) INITIAL QUORUM ESTABLISHED.—During any
22 time period prior to the confirmation of at least two mem-
23 bers of the Commission under subsection (b)(2), one mem-
24 ber of the Commission shall constitute a quorum for the
25 transaction of business. Following the confirmation of at

1 least 2 additional commissioners, the quorum require-
 2 ments of subsection (e) shall apply.

3 (i) DEFINITIONS.—Notwithstanding section 4002,
 4 for purposes of this section:

5 (1) AGENCY.—The term “Agency” means the
 6 Consumer Financial Protection Agency.

7 (2) DIRECTOR.—The term “Director” means
 8 the Director of the Agency.

9 **SEC. 4104. CONSUMER FINANCIAL PROTECTION OVER-**
 10 **SIGHT BOARD.**

11 (a) ESTABLISHED.—There is hereby established the
 12 Consumer Financial Protection Oversight Board as an in-
 13 strumentality of the United States.

14 (b) DUTIES AND POWERS.—

15 (1) DUTY TO ADVISE DIRECTOR.—The Board
 16 shall advise the Director on—

17 (A) the consistency of a proposed regula-
 18 tion of the Director with prudential, market, or
 19 systemic objectives administered by the agencies
 20 that comprise the Board;

21 (B) the overall strategies and policies in
 22 carrying out the duties of the Director under
 23 this title; and

1 (C) actions the Director can take to en-
2 hance and ensure that all consumers are subject
3 to robust financial protection.

4 (2) LIMITATION ON POWERS.—The Board may
5 not exercise any executive authority, and the Direc-
6 tor may not delegate to the Board any of the func-
7 tions, powers, or duties of the Director.

8 (c) COMPOSITION.—The Board shall be comprised of
9 7 members as follows:

10 (1) The Chairman of the Board of Governors.

11 (2) The head of the agency responsible for
12 chartering and regulating national banks.

13 (3) The Chairperson of the Federal Deposit In-
14 surance Corporation.

15 (4) The Chairman of the National Credit Union
16 Administration.

17 (5) The Chairman of the Federal Trade Com-
18 mission.

19 (6) The Secretary of Housing and Urban Devel-
20 opment.

21 (7) The Chairman of the liaison committee of
22 representatives of State agencies to the Financial In-
23 stitutions Examination Council.

24 (d) REPRESENTATIVE OF ADDITIONAL INTERESTS.—

1 (1) COMPOSITION.—Notwithstanding subsection
2 (c), the President, by and with the advice and con-
3 sent of the Senate, shall appoint 5 additional mem-
4 bers of the Board from among experts in the fields
5 of consumer protection, fair lending and civil rights,
6 representatives of depository institutions that pri-
7 marily serve underserved communities, or represent-
8 atives of communities that have been significantly
9 impacted by higher-priced mortgage loans, as such
10 communities are identified by the Director through
11 an analysis of data received by reason of the provi-
12 sions of the Home Mortgage Disclosure Act of 1975
13 or other data on lending patterns.

14 (2) AFFILIATION.—With respect to members
15 appointed pursuant to paragraph (1), not more than
16 3 shall be members of any one political party.

17 (e) MEETINGS.—

18 (1) IN GENERAL.—The Board shall meet upon
19 notice by the Director, but in no event shall the
20 Board meet less frequently than once every 3
21 months.

22 (2) SPECIAL MEETINGS.—Any member of the
23 Board may, upon giving written notice to the Direc-
24 tor, require a special meeting of the Board.

1 (f) PROHIBITION ON ADDITIONAL COMPENSATION.—
2 Members of the Board may not receive additional pay, al-
3 lowances, or benefits by reason of their service on the
4 Board.

5 (g) COMPLAINTS RELATED TO REQUIRED OFFERING
6 OF SPECIFIC FINANCIAL PRODUCTS OR SERVICES.—The
7 Board shall establish procedures to receive and analyze
8 complaints from any person claiming that the Director is
9 not in compliance with the requirements under section
10 4311.

11 **SEC. 4105. EXECUTIVE AND ADMINISTRATIVE POWERS.**

12 The Director may exercise all executive and adminis-
13 trative functions of the Agency, including to—

14 (1) establish regulations for conducting the
15 Agency's general business in a manner not incon-
16 sistent with this title;

17 (2) bind the Agency and enter into contracts;

18 (3) direct the establishment of and maintain di-
19 visions or other offices within the Agency in order to
20 fulfill the responsibilities of this title, the enumer-
21 ated consumer laws, and the authorities transferred
22 under subtitles F and H, and to satisfy the require-
23 ments of other applicable law, except that the Direc-
24 tor shall not exercise any authorities that are grant-

1 ed to State insurance authorities under section
2 505(a)(6) of the Gramm-Leach-Bliley Act;

3 (4) coordinate and oversee the operation of all
4 administrative, enforcement, and research activities
5 of the Agency;

6 (5) adopt and use a seal;

7 (6) determine the character of and the necessity
8 for the Agency's obligations and expenditures, and
9 the manner in which they shall be incurred, allowed,
10 and paid;

11 (7) delegate authority, at the Director's discre-
12 tion, to any officer or employee of the Agency to
13 take action under any provision of this title or under
14 other applicable law;

15 (8) to implement this title and the Agency's au-
16 thorities under the enumerated consumer laws and
17 under subtitles F and H through regulations, orders,
18 guidance, interpretations, statements of policy, ex-
19 aminations, and enforcement actions; and

20 (9) perform such other functions as may be au-
21 thorized or required by law.

22 **SEC. 4106. ADMINISTRATION.**

23 (a) OFFICERS.—The Director shall appoint the fol-
24 lowing officials:

1 (1) A secretary, who shall be charged with
2 maintaining the records of the Agency and per-
3 forming such other activities as the Director directs.

4 (2) A general counsel, who shall be charged
5 with overseeing the legal affairs of the Agency and
6 performing such other activities as the Director di-
7 rects.

8 (3) An inspector general, who shall have the au-
9 thority and functions of an inspector general of an
10 establishment under the Inspector General Act of
11 1978 (5 U.S.C. App. 3).

12 (4) An Ombudsperson, who shall—

13 (A) develop and maintain expertise in and
14 understanding of the law relating to consumer
15 financial products;

16 (B) at the request of a Federal agency or
17 a State agency, and with the prior approval of
18 the Director, advise such agency with respect to
19 actions that may affect consumers;

20 (C) advise consumers who may have a le-
21 gitimate potential or actual claim against a
22 Federal agency involving the provision of con-
23 sumer financial products regarding their rights
24 under this title;

1 (D) identify Federal agency actions that
2 have potential implications for consumers and,
3 if appropriate, and with the prior approval of
4 the Director, advise the relevant Federal agen-
5 cies with respect to those implications;

6 (E) provide information to private citizens,
7 civic groups, Federal agencies, State agencies,
8 and other interested parties regarding the
9 rights of those parties under this title;

10 (F) develop, maintain, and provide exper-
11 tise designed to assist covered persons, espe-
12 cially smaller depository institutions and other
13 smaller entities to comply with regulations and
14 other requirements issued to implement the pro-
15 visions of this title, and where such assistance
16 for smaller depository institutions shall be pro-
17 vided jointly by the Agency and the appropriate
18 Federal banking agency;

19 (G) develop procedures to assist covered
20 persons, especially smaller depository institu-
21 tions and other smaller entities, in responding
22 to or challenging actions taken by the Director
23 or the Agency to implement the provisions of
24 this title and to ensure that safeguards exist to

1 preserve the confidentiality of covered persons
2 using those procedures; and

3 (H) perform such other duties as the Di-
4 rector may delegate to the Ombudsperson.

5 (b) PERSONNEL.—

6 (1) APPOINTMENT.—The Director may fix the
7 number of, and appoint and direct, all employees of
8 the Agency.

9 (2) COMPENSATION.—

10 (A) PAY.—The Director shall fix, adjust,
11 and administer the pay for all employees of the
12 Agency without regard to the provisions of
13 chapter 51 or subchapter III of chapter 53 of
14 title 5, United States Code.

15 (B) BENEFITS.—The Director may provide
16 additional benefits to Agency employees if the
17 same type of benefits are then being provided
18 by the Board of Governors or, if not then being
19 provided, could be provided by the Board of
20 Governors under applicable provisions of law or
21 regulations.

22 (C) MINIMUM STANDARD.—The Director
23 shall at all times provide compensation and ben-
24 efits to classes of employees that, at a min-
25 imum, are equivalent to the compensation and

1 benefits provided by the Board of Governors for
2 the corresponding class of employees in any fis-
3 cal year.

4 (c) SPECIFIC FUNCTIONAL UNITS.—

5 (1) RESEARCH.—The Agency shall establish a
6 unit whose functions shall include—

7 (A) conducting research on consumer fi-
8 nancial counseling and education, including—

9 (i) on the topics of debt, credit, sav-
10 ings, financial product usage, and financial
11 planning;

12 (ii) exploring effective methods, tools,
13 and approaches; and

14 (iii) identifying ways to incorporate
15 new technology for the delivery and evalua-
16 tion of financial counseling and education
17 efforts;

18 (B) researching, analyzing, and reporting
19 on—

20 (i) current and prospective develop-
21 ments in markets for consumer financial
22 products or services, including market
23 areas of alternative consumer financial
24 products or services with high growth
25 rates;

1 (ii) consumer awareness, under-
2 standing, and use of disclosures and com-
3 munications regarding consumer financial
4 products or services;

5 (iii) consumer awareness and under-
6 standing of costs, risks, and benefits of
7 consumer financial products or services;

8 (iv) consumer behavior with respect to
9 consumer financial products or services, in-
10 cluding performance on mortgage loan;

11 (v) experiences of traditionally under-
12 served consumers, including un-banked and
13 under-banked consumers, regarding con-
14 sumer financial products or services, and
15 the impact of Federal policies, including
16 resource limits in means-tested Federal
17 benefit programs (as defined in section
18 318 of the Higher Education Act of 1965;
19 20 U.S.C. 1059e), on such consumers in
20 influencing banking behavior; and

21 (vi) the nature, range, and size of
22 variations between the credit scores sold to
23 creditors and those sold to consumers by
24 consumer reporting agencies that compile
25 and maintain files on consumers on a na-

tionwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers;

(C) identifying priorities for consumer financial education efforts, based on consumer complaints, research or analysis conducted pursuant to subparagraph (A), or other information; and

(D) testing and identifying methods of educating consumers to determine which methods are most effective.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) CONSUMER COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a central database, or utilizing an existing database, for collecting and tracking information on consumer complaints about con-

sumer financial products or services and resolution of complaints.

(B) COORDINATION.—In performing the functions described in subparagraph (A), the Director shall coordinate with the Federal banking agencies, the Federal Trade Commission, other Federal agencies, and other regulatory agencies or enforcement authorities.

(C) DATA SHARING REQUIRED.—To the extent permitted by law and the regulations prescribed by the Director regarding the confidential treatment of information, the Director shall share data relating to consumer complaints with Federal banking agencies, the Federal Trade Commission, other Federal agencies, and State regulators. To the extent permitted by law and the regulations prescribed by the Federal banking agencies and other Federal agencies regarding the confidential treatment of information, the Federal banking agencies and other Federal agencies, respectively, shall share data relating to consumer complaints with the Director and the Agency.

(D) CONSUMER COMPLAINT WEB SITE.—The Director shall establish an Internet Web

1 site for consumer complaints and inquiries con-
2 cerning institutions regulated by the Agency.
3 The Web site shall be interoperable with the
4 database established under subparagraph (A).

5 (4) CONSUMER FINANCIAL EDUCATION.—

6 (A) IN GENERAL.—The Agency shall es-
7 tablish a unit to be named the Office of Finan-
8 cial Literacy, whose functions shall include ac-
9 tivities designed to facilitate the education of
10 consumers on consumer financial products and
11 services, including through the dissemination of
12 materials to consumers on such topics.

13 (B) DIRECTOR.—The Office of Financial
14 Literacy shall be headed by a director.

15 (C) DUTIES.—Such unit shall—

16 (i) develop goals for programs to be
17 provided by persons that provide consumer
18 financial education and counseling, includ-
19 ing programs through which such per-
20 sons—

21 (I) provide one-on-one financial
22 counseling;

23 (II) help individuals understand
24 basic banking and savings tools;

1 (III) help individuals understand
2 their credit history and credit score;

3 (IV) assist individuals in efforts
4 to plan for major purchases, reduce
5 their debt, and improve their financial
6 stability; and

7 (V) work with individuals to de-
8 sign plans for long-term savings;

9 (ii) develop recommendations regard-
10 ing effective certification of persons pro-
11 viding programs, or performing the activi-
12 ties, described in clause (i), including rec-
13 ommendations regarding—

14 (I) certification processes and
15 standards for certification;

16 (II) appropriate certifying bodies;
17 and

18 (III) mechanisms for funding the
19 certification processes;

20 (iii) develop a technology tool to col-
21 lect data on financial education and coun-
22 seling outcomes; and

23 (iv) conduct research to identify effec-
24 tive methods, tools, technology, and strate-
25 gies to educate and counsel consumers

1 about personal finance management, in-
2 cluding on the topics of debt, credit, sav-
3 ings, financial product usage, and financial
4 planning.

5 (D) COORDINATION.—Such unit shall co-
6 ordinate with other units within the Agency in
7 carrying out its functions, including—

8 (i) working with the unit established
9 under paragraph (2) to—

10 (I) provide information and re-
11 sources to community organizations,
12 nonprofit organizations, and other en-
13 tities to assist in helping educate con-
14 sumers about consumer financial
15 products and services; and

16 (II) develop a marketing strategy
17 to promote financial education and
18 one-on-one counseling; and

19 (ii) working with the unit established
20 under paragraph (1) to conduct research
21 related to consumer financial education
22 and counseling.

23 (d) SINGLE TOLL-FREE TELEPHONE NUMBER FOR
24 CONSUMER COMPLAINTS AND INQUIRIES.—

1 (1) CALL INTAKE SYSTEM.—The Consumer Fi-
2 nancial Protection Agency shall establish a single,
3 toll-free telephone number for consumer complaints
4 and inquiries concerning institutions regulated by
5 such agencies and a system for collecting and moni-
6 toring complaints and, as soon as practicable, a sys-
7 tem for routing such calls to the Federal financial
8 institution regulatory agency that primarily super-
9 vises the financial institution, or that is otherwise
10 the appropriate Federal agency to address the sub-
11 ject of the complaint or inquiry.

12 (2) ROUTING CALLS TO STATES.—To the extent
13 practicable, State agencies may receive appropriate
14 call transfers from the system established under
15 paragraph (1) if—

16 (A) the State agency's system has the
17 functional capacity to receive calls routed by the
18 system; and

19 (B) the State agency has satisfied any con-
20 ditions of participation in the system that the
21 Council, coordinating with State agencies
22 through the chairperson of the State Liaison
23 Committee, may establish.

24 (e) REPORT TO THE CONGRESS.—Before the end of
25 the 6-month period beginning on the date of the enact-

1 ment of this title, the Federal financial institution regu-
2 latory agencies shall submit a report to the Committee on
3 Financial Services of the House of Representatives and
4 the Committee on Banking, Housing, and Urban Affairs
5 of the Senate describing the agencies' efforts to estab-
6 lish—

7 (1) a public interagency Web site for directing
8 and referring Internet consumer complaints and in-
9 quiries concerning any financial institution to the
10 Consumer Financial Protection Agency for purposes
11 of collecting, monitoring, and responding to such
12 complaints and, where appropriate, a system for re-
13 ferring complaints to the Federal financial institu-
14 tion regulatory agency, other Federal agency, or
15 State agency that is otherwise the appropriate agen-
16 cy to address the subject of the complaint or inquiry;
17 and

18 (2) a system to expedite the prompt and effec-
19 tive rerouting of any misdirected consumer com-
20 plaint or inquiry documents between or among the
21 agencies, with prompt referral of any complaint or
22 inquiry to the appropriate Federal financial institu-
23 tion regulatory agency, and to participating State
24 agencies.

1 (f) OFFICE OF FINANCIAL PROTECTION FOR OLDER
2 AMERICANS.—

3 (1) ESTABLISHMENT.—Before the end of the
4 180-day period beginning on the date of the enact-
5 ment of this title, the Director shall establish within
6 the Agency the Office of Financial Protection for
7 Older Americans, whose functions shall include ac-
8 tivities designed to facilitate the financial literacy of
9 individuals who have attained the age of 62 years or
10 more (in this paragraph, referred to as “seniors”)
11 on protection from unfair and deceptive practices
12 and on current and future financial choices, includ-
13 ing through the dissemination of materials to seniors
14 on such topics.

15 (2) DIRECTOR.—The Office of Financial Pro-
16 tection for Older Americans shall be headed by a di-
17 rector.

18 (3) DUTIES.—Such unit shall perform the fol-
19 lowing duties:

20 (A) Develop goals for programs that pro-
21 vide seniors financial literacy and counseling,
22 including programs that—

23 (i) help seniors recognize warning
24 signs of unfair and deceptive practices,
25 protect themselves from such practices;

1 (ii) provide one-on-one financial coun-
2 seling on issues including long-term sav-
3 ings and later-life economic security; and

4 (iii) provide personal consumer credit
5 advocacy to respond to consumer problems
6 caused by unfair and deceptive practices.

7 (B) Monitor certifications or designations
8 of financial advisors who advise seniors and
9 alert the Securities and Exchange Commission
10 and State regulators of certifications or des-
11 ignations that are identified as unfair or decep-
12 tive.

13 (C) Not later than 18 months after the
14 date of the establishment of the Office of Fi-
15 nancial Protection for Older Americans, submit
16 to Congress and the Securities and Exchange
17 Commission recommendations of the best prac-
18 tices for any legislative and regulatory—

19 (i) disseminating information regard-
20 ing the legitimacy of certifications of finan-
21 cial advisers who advise seniors;

22 (ii) methods in which a senior can
23 identify the financial advisor most appro-
24 priate for the senior's needs; and

1 (iii) methods in which a senior can
2 verify a financial advisor's credentials.

3 (D) Conduct research to identify best prac-
4 tices and effective methods, tools, technology
5 and strategies to educate and counsel seniors
6 about personal finance management with a
7 focus on—

8 (i) protecting themselves from unfair
9 and deceptive practices;

10 (ii) long-term savings; and

11 (iii) planning for retirement and long-
12 term care.

13 (E) Coordinate consumer protection efforts
14 of seniors with other Federal agencies and
15 State regulators, as appropriate, to promote
16 consistent, effective, and efficient enforcement.

17 (F) Work with community organizations,
18 non-profit organizations, and other entities that
19 are involved with educating or assisting seniors
20 (including the National Education and Re-
21 source Center on Women and Retirement Plan-
22 ning).

23 (g) OFFICE OF FAIR LENDING AND EQUAL OPPOR-
24 TUNITY.—

1 (1) ESTABLISHMENT.—Before the end of the
2 180-day period beginning on the date of the enact-
3 ment of this title, the Director shall establish within
4 the Agency the Office of Fair Lending and Equal
5 Opportunity.

6 (2) FUNCTIONS.—The Office of Fair Lending
7 and Equal Opportunity shall have such powers and
8 duties as the Director may delegate the Office which
9 shall include the following functions:

10 (A) Providing oversight and enforcement of
11 Federal laws intended to ensure the fair, equi-
12 table, and nondiscriminatory access to credit for
13 both individuals and communities that are en-
14 forced by the Agency, including the Equal
15 Credit Opportunity Act and the Home Mort-
16 gage Disclosure Act.

17 (B) Coordinating fair lending enforcement
18 efforts of the Agency with other Federal agen-
19 cies and State regulators, as appropriate, to
20 promote consistent, efficient and effective en-
21 forcement of Federal fair lending laws.

22 (C) Working with private industry, fair
23 lending, civil rights, consumer and community
24 advocates on the promotion of fair lending com-
25 pliance and education.

1 (D) Providing annual reports to the Con-
2 gress on the Agency's efforts to fulfill its fair
3 lending mandate.

4 (3) ADMINISTRATION OF OFFICE.—There is
5 hereby established the position of Assistant Director
6 of the Agency for Fair Lending and Equal Oppor-
7 tunity who—

8 (A) shall be appointed by the Director;

9 (B) shall carry out such duties as the Di-
10 rector may delegate to such Assistant Director;
11 and

12 (C) shall serve as the Director of the Of-
13 fice of Fair Lending and Equal Opportunity.

14 (4) PROHIBITIONS ON PARTICIPATION IN PRO-
15 GRAMS WITH RESPECT TO CERTAIN INDICTED ORGA-
16 NIZATIONS.—

17 (A) PROHIBITION.—The Director of the
18 Office of Fair Lending and Equal Opportunity
19 may not allow a covered organization to partici-
20 pate in any program established by such Direc-
21 tor.

22 (B) COVERED ORGANIZATION.—In this
23 paragraph, the term “covered organization”
24 means any of the following:

1 (i) Any organization that has been in-
2 dicted for a violation under any Federal or
3 State law governing the financing of a
4 campaign for election for public office or
5 any law governing the administration of an
6 election for public office, including a law
7 relating to voter registration.

8 (ii) Any organization that had its
9 State corporate charter terminated due to
10 its failure to comply with Federal or State
11 lobbying disclosure requirements.

12 (iii) Any organization that has filed a
13 fraudulent form with any Federal or State
14 regulatory agency.

15 (iv) Any organization that—

16 (I) employs any applicable indi-
17 vidual, in a permanent or temporary
18 capacity;

19 (II) has under contract or retains
20 any applicable individual; or

21 (III) has any applicable indi-
22 vidual acting on the organization's be-
23 half or with the express or apparent
24 authority of the organization.

1 (C) ADDITIONAL DEFINITIONS.—In this
2 paragraph:

3 (i) The term “organization” includes
4 the Association of Community Organiza-
5 tions for Reform Now (in this paragraph
6 referred to as “ACORN”) and any
7 ACORN-related affiliate.

8 (ii) The term “ACORN-related affil-
9 iate” means any of the following:

10 (I) Any State chapter of ACORN
11 registered with the Secretary of
12 State’s office in that State.

13 (II) Any organization that shares
14 directors, employees, or independent
15 contractors with ACORN.

16 (III) Any organization that has a
17 financial stake in ACORN.

18 (IV) Any organization whose fi-
19 nances, whether federally funded,
20 donor-funded, or raised through orga-
21 nizational goods and services, are
22 shared or controlled by ACORN.

23 (iii) The term “applicable individual”
24 means an individual who has been indicted
25 for a violation under Federal or State law

1 relating to an election for Federal or State
2 office.

3 (D) REVISION OF FEDERAL ACQUISITION
4 REGULATION.—The Federal Acquisition Regu-
5 lation shall be revised to carry out the provi-
6 sions of this paragraph relating to contracts.

7 (E) SEVERABILITY.—If any provision of
8 this section or any application of such provision
9 to any person or circumstance is held to be un-
10 constitutional, the remainder of this section and
11 the application of the provision to any other
12 person or circumstance shall not be affected.

13 **SEC. 4107. CONSUMER ADVISORY BOARD.**

14 (a) ESTABLISHMENT REQUIRED.—The Director shall
15 establish a Consumer Advisory Board to advise and con-
16 sult with the Director in the exercise of the functions of
17 the Director and the Agency under this title, the enumer-
18 ated consumer laws, and to provide information on emerg-
19 ing practices in the consumer financial products or serv-
20 ices industry.

21 (b) MEMBERSHIP.—

22 (1) IN GENERAL.—In appointing the members
23 of the Consumer Advisory Board, the Director shall
24 seek—

1 (A) to assemble experts in financial serv-
2 ices, community development, fair lending and
3 civil rights, consumer protection, and consumer
4 financial products or services; and

5 (B) to represent the interests of covered
6 persons and consumers.

7 (2) PROHIBITION ON MEMBERSHIP WITH RE-
8 SPECT TO CERTAIN INDICTED ORGANIZATIONS.—The
9 director may not appoint an employee of a covered
10 organization (as defined in section 4105(f)(4)(B)) to
11 the Consumer Advisory Board.

12 (c) POLITICAL AFFILIATION.—Not more than 1 more
13 than half of the members of the Consumer Advisory Board
14 may be members of the same political party.

15 (d) MEETINGS.—The Consumer Advisory Board shall
16 meet from time to time at the call of the Director, but,
17 at a minimum, shall meet at least twice in each year.

18 (e) COMPENSATION AND TRAVEL EXPENSES.—Mem-
19 bers of the Consumer Advisory Board who are not full-
20 time employees of the United States shall—

21 (1) be entitled to receive compensation at a rate
22 fixed by the Director while attending meetings of the
23 Consumer Advisory Board, including travel time;
24 and

1 (2) be allowed travel expenses, including trans-
2 portation and subsistence, while away from their
3 homes or regular places of business.

4 **SEC. 4108. COORDINATION.**

5 (a) COORDINATION WITH OTHER FEDERAL AGEN-
6 CIES AND STATE REGULATORS.—The Director shall co-
7 ordinate with the Securities and Exchange Commission,
8 the Commodity Futures Trading Commission, the Sec-
9 retary of the Treasury, the Federal Trade Commission,
10 and other Federal agencies and State regulators, as appro-
11 priate, to promote consistent regulatory treatment of, and
12 enforcement related to, consumer and investment prod-
13 ucts, services, and laws.

14 (b) COORDINATION OF CONSUMER EDUCATION INI-
15 TIATIVES.—

16 (1) IN GENERAL.—The Director shall coordi-
17 nate with each agency that is a member of the Fi-
18 nancial Literacy and Education Commission estab-
19 lished by the Financial Literacy and Education Im-
20 provement Act (20 U.S.C. 9701 et seq.) to assist
21 each agency in enhancing its existing financial lit-
22 eracy and education initiatives to better achieve the
23 goals in paragraph (2) and to ensure the consistency
24 of such initiatives across Federal agencies.

1 (2) GOALS OF COORDINATION.—In coordinating
2 with the agencies described in paragraph (1), the
3 Director shall seek to improve efforts to educate
4 consumers about financial matters generally, the
5 management of their own financial affairs, and their
6 judgments about the appropriateness of certain fi-
7 nancial products.

8 (c) COORDINATION.—The Agency may coordinate in-
9 vestigations, compliance examinations, information shar-
10 ing, and related activities in support of activities under-
11 taken pursuant to the Fair Housing Act by other Federal
12 agencies.

13 **SEC. 4109. REPORTS TO THE CONGRESS.**

14 (a) REPORTS REQUIRED.—The Director shall pre-
15 pare and submit to the President and the appropriate
16 committees of the Congress a report at the beginning of
17 each regular session of the Congress, beginning with the
18 session following the designated transfer date.

19 (b) CONTENTS.—The reports required by subsection
20 (a) shall include—

21 (1) a list of the significant regulations and or-
22 ders adopted by the Director, as well as other sig-
23 nificant initiatives conducted by the Director, during
24 the preceding year and the Director’s plan for regu-

1 lations, orders, or other initiatives to be undertaken
2 during the upcoming period;

3 (2) an analysis of the major problems con-
4 sumers of financial products and services were con-
5 fronted with during the preceding year, including a
6 description of the nature of such problems, and rec-
7 ommendations for such administrative and legislative
8 action as may be appropriate to resolve such prob-
9 lems;

10 (3) a list, with a brief statement of the issues,
11 of the public supervisory and enforcement actions to
12 which the Agency is a party (including adjudication
13 proceedings conducted under subtitle E) during the
14 preceding year;

15 (4) the actions taken regarding regulations, or-
16 ders, and supervisory actions with respect to covered
17 persons which are not credit unions or depository in-
18 stitutions, including descriptions of the types of such
19 covered persons, financial activities, and consumer
20 financial products or services affected by such regu-
21 lations, orders, and supervisory actions;

22 (5) an appraisal of significant actions, including
23 actions under Federal or State law, by State attor-
24 neys general or State regulators relating to this title,

1 the authorities transferred under subtitles F and H,
2 and the enumerated consumer laws;

3 (6) an analysis of the Agency's efforts to in-
4 crease workforce and contracting diversity consistent
5 with subtitle I of title I of this Act;

6 (7) an analysis of the Agency's efforts to fulfill
7 the fair lending mission of the Agency; and

8 (8) an appraisal of the regulatory and legal dif-
9 ficulties encountered by the Agency in carrying out
10 the mission and duties of the Agency with respect to
11 consumer protection, including a description of—

12 (A) the difficulties and hardships encoun-
13 tered with respect to coordinating with other
14 Federal and State government entities;

15 (B) the regulatory and enforcement limita-
16 tions placed on the Agency by this title;

17 (C) the practices of persons, covered and
18 uncovered under this title, that allow such per-
19 sons to harm consumers and escape regulation
20 or enforcement, including any trends identified;
21 and

22 (D) legislative and administrative rec-
23 ommendations with respect to solving or alle-
24 viating identified difficulties.

1 (c) ANNUAL APPEARANCE BEFORE THE CON-
2 GRESS.—The Director shall appear before the House
3 Committee on Financial Services and the House Com-
4 mittee on Energy and Commerce at an annual hearing,
5 after the report is submitted under subsection (a)—

6 (1) to discuss the efforts, activities, objectives
7 and plans of the Agency; and

8 (2) discuss and answer questions concerning
9 such report.

10 **SEC. 4110. GAO SMALL BUSINESS STUDIES.**

11 (a) STUDIES REQUIRED.—Not later than the end of
12 the 3-year period beginning on the designated transfer
13 date, and also 3 years thereafter, the Comptroller General
14 of the United States shall carry out a study to examine
15 the effects that regulations issued by the Agency have on
16 small businesses.

17 (b) REPORT.—At the conclusion of each study re-
18 quired under subsection (a), the Comptroller General of
19 the United States shall issue a report to the Congress con-
20 taining the finding and determinations made by the Comp-
21 troller General in carrying out such study.

22 **SEC. 4111. FUNDING; FEES AND ASSESSMENTS; PENALTIES**
23 **AND FINES.**

24 (a) TRANSFER OF FUNDS FROM THE BOARD OF
25 GOVERNORS.—

1 (1) TRANSFER REQUIRED.—Each year, begin-
2 ning on the designated transfer date, the Board of
3 Governors shall transfer funds in an amount equal-
4 ing 10 percent of the Federal Reserve System’s total
5 system expenses (as reported in the Budget Review
6 of the Board of Governors most recent Annual Re-
7 port to Congress) to the Director for the purposes
8 of carrying out the authorities granted in this title,
9 under the enumerated consumer laws, and trans-
10 ferred under subtitles F and H.

11 (2) PROCEDURES.—The Board of Governors, in
12 consultation with the Agency, shall make appro-
13 priate arrangements to transfer funds to the Direc-
14 tor in accordance with this subsection.

15 (b) FEES AND ASSESSMENTS.—

16 (1) ASSESSMENT REQUIRED.—

17 (A) IN GENERAL.—Taking into account
18 such other sums available to the Agency and
19 subject to the provisions of this subsection and
20 subsection (d), the Director shall assess fees on
21 covered persons to meet the Agency’s expenses
22 for carrying out the duties and responsibilities
23 of the Agency, including supervising such cov-
24 ered persons.

1 (B) BASIS FOR ASSESSMENT.—The Agency
2 shall assess fees on covered persons pursuant to
3 this subsection based on the size, complexity of,
4 risk posed by, and the compliance record of the
5 covered person under the enumerated consumer
6 laws, the laws and authorities transferred under
7 subtitles F and H, and this title.

8 (2) REGULATIONS.—

9 (A) IN GENERAL.—The Director shall pre-
10 scribe regulations to govern the imposition and
11 collection of fees and assessments.

12 (B) FACTORS REQUIRED TO BE AD-
13 DRESSED.—Regulations prescribed by the Di-
14 rector under this subsection shall specify and
15 define—

16 (i) the basis of fees or assessments
17 (such as the outstanding number of con-
18 sumer credit accounts, off-balance sheet re-
19 ceivables attributable to the covered per-
20 son, total consolidated assets, total assets
21 under management, or volume of consumer
22 financial transactions or use of service pro-
23 viders);

24 (ii) the amount and frequency of fees
25 or assessments; and

1 (iii) such other factors that the Direc-
2 tor determines are appropriate, which shall
3 include a covered person's compliance
4 record under the enumerated consumer
5 laws, the authorities transferred under
6 subtitles F and H, and this title.

7 (3) ASSESSMENTS ON DEPOSITORY INSTITU-
8 TION COVERED PERSONS.—

9 (A) DEPOSITORY INSTITUTION COVERED
10 PERSON DEFINED.—For purposes of this sec-
11 tion, the term “depository institution covered
12 person” means a covered person that is an in-
13 sured depository institution or credit union.

14 (B) ASSESSMENTS.—

15 (i) FEES REQUIRED.—The Director
16 shall assess fees for supervision as are ap-
17 propriate on depository institution covered
18 persons, taking into account the size, com-
19 plexity of, risk posed by, and the compli-
20 ance record of the covered person under
21 the enumerated consumer laws, the laws
22 and authorities transferred under subtitles
23 F and H, and this title.

24 (ii) LIMITATION ON CERTAIN FEES.—
25 The Agency shall not assess examination

1 fees on an institution referred to in section
2 4203(a), or an institution whose examina-
3 tion responsibilities have been delegated to
4 an appropriate agency, pursuant to section
5 4202(c)(11).

6 (iii) BASIS FOR FEE AMOUNTS.—Fees
7 assessed by the Director under this sub-
8 paragraph may be established at levels nec-
9 essary to meet the Agency’s expenses for
10 carrying out the duties and responsibilities
11 of the Director and the Agency under this
12 title with regard to depository institution
13 covered persons.

14 (C) COORDINATION DURING IMPLEMENTA-
15 TION PERIOD.—The Director and the agencies
16 responsible for chartering and or supervising
17 depository institution covered persons shall co-
18 ordinate on the levels of fees assessed on depos-
19 itory institution covered persons under this
20 paragraph, so that levels of assessments under
21 this subparagraph combined with levels of as-
22 sessments by agencies responsible for chartering
23 and or supervising depository institution cov-
24 ered persons in each of the first 3 years fol-
25 lowing the date of enactment of this Act shall

1 be no more than the assessments such deposi-
2 tory institution covered person was required to
3 pay for the calendar year immediately preceding
4 the designated transfer date.

5 (D) MARGINAL ASSESSMENT RATE.—

6 (i) IN GENERAL.—In setting assess-
7 ment rates for depository institution cov-
8 ered persons, the Director shall not impose
9 assessments that, on a risk-adjusted basis,
10 result in higher marginal assessment rates
11 for depository institution covered persons
12 with assets of less than \$25,000,000,000
13 than the marginal rates for depository in-
14 stitutions covered persons with assets that
15 exceed that amount.

16 (ii) RULE OF CONSTRUCTION.—

17 Clause (i) shall not be construed as lim-
18 iting or impairing the authority of the Di-
19 rector to set assessments that would result
20 in higher marginal assessment rates on the
21 larger depository institution covered per-
22 sons or to set assessments that would re-
23 sult in higher marginal assessments on the
24 depository institution covered persons with
25 assets of less than \$25,000,000,000 if

1 based on the compliance record of or high-
2 er risks posed by such covered persons.

3 (E) LIMITATIONS ON ASSESSMENTS.—

4 (i) ASSESSMENTS FOR ADMINISTRA-
5 TIVE COSTS.—Notwithstanding any provi-
6 sion in this title, no depository institution
7 covered person shall be charged an assess-
8 ment to be used for the supervision, exam-
9 ination, or enforcement activities by the
10 Agency of nondepository covered persons.

11 (ii) AMOUNTS PAID FOR CONSUMER
12 COMPLIANCE SUPERVISION.—Notwith-
13 standing any provision in this title, no de-
14 pository institution covered person shall
15 pay more for consumer compliance super-
16 vision so that levels of assessments under
17 this subparagraph combined with levels of
18 assessments by an agency responsible for
19 chartering and/or supervising the deposi-
20 tory institution covered person shall be no
21 more than it paid before the date of enact-
22 ment of this title.

23 (4) ASSESSMENTS ON NONDEPOSITORY COV-
24 ERED PERSONS.—

1 (A) NONDEPOSITORY COVERED PERSON
2 DEFINED.—For purposes of this section, the
3 term “nondepository covered person”—

4 (i) means a covered person that is not
5 a credit union or insured depository insti-
6 tution; and

7 (ii) includes any bank holding com-
8 pany.

9 (B) ASSESSMENTS.—

10 (i) FEES REQUIRED.—The Director
11 shall assess fees for registration, examina-
12 tion, and supervision of nondepository cov-
13 ered persons.

14 (ii) BASIS FOR FEE AMOUNTS.—Fees
15 assessed by the Director under this sub-
16 paragraph may be established at levels nec-
17 essary to meet the Agency’s expenses for
18 carrying out the duties and responsibilities
19 of the Director and the Agency, including
20 supervising such covered persons, taking
21 into account such other sums available to
22 the Agency.

23 (iii) REGISTRATION FEE MINIMUMS.—
24 Registration fees imposed on a nondeposi-
25 tory covered person under this paragraph

1 shall, at a minimum, be imposed on such
2 covered person at the time the person reg-
3 isters (or periodically renews any such reg-
4 istration) with the Agency, in accordance
5 with regulations prescribed by the Direc-
6 tor.

7 (C) NONDEPOSITORY COVERED PERSON
8 ASSESSMENT NOT LESS THAN FOR DEPOSITORY
9 COVERED PERSONS.—Assessment rates levied
10 by the Director under this section on a non-
11 depository institution covered persons shall be
12 no less than assessments levied by the Agency
13 under this section on a depository institution
14 covered person with similar characteristics.

15 (D) OFFSETTING COLLECTIONS.—Fees as-
16 sessed under this paragraph—

17 (i) shall not be collected for any fiscal
18 year except to the extent provided in ad-
19 vance in appropriation Acts; and

20 (ii) shall be deposited and credited as
21 offsetting collections to the account pro-
22 viding appropriations to the Agency.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—

24 (1) IN GENERAL.—For the purposes of carrying
25 out the authorities granted in this title, under the

1 enumerated consumer laws, and the laws and au-
2 thorities transferred under subtitles F and H, there
3 are authorized to be appropriated to the Director
4 \$200,000,000 for each of fiscal years 2010, 2011,
5 2012, 2013, and 2014.

6 (2) APPORTIONMENT.—Notwithstanding any
7 other provision of law, such amounts shall be subject
8 to apportionment under section 1517 of title 31,
9 United States Code, and restrictions that generally
10 apply to the use of appropriated funds in title 31,
11 United States Code, and other laws.

12 (3) OTHER AVAILABLE FUNDS TAKEN INTO AC-
13 COUNT.—Sums appropriated under this subsection
14 shall take into account such other sums available to
15 the Agency under this section.

16 (d) CONSUMER FINANCIAL PROTECTION AGENCY
17 DEPOSITORY INSTITUTION FUND.—

18 (1) ESTABLISHMENT.—

19 (A) IN GENERAL.—There is established in
20 the Treasury a separate fund to be known as
21 the “Consumer Financial Protection Agency
22 Depository Institution Fund” (hereafter in this
23 section referred to as the “CFPA Depository
24 Fund”).

1 (B) AMOUNTS IN FUND NOT AVAILABLE
2 FOR CERTAIN PURPOSES.—Other than pursuant
3 to subsection (f), amounts on deposit in the
4 CFPA Depository Fund shall not be used in the
5 supervision and examination of nondepository
6 institution covered persons.

7 (2) ALL TRANSFERRED FUNDS DEPOSITED.—
8 All amounts transferred to the Agency under sub-
9 section (a) shall be deposited into the CFPA Deposi-
10 tory Fund or the CFPA Nondepository Fund, at the
11 discretion of the Agency.

12 (3) ALL APPLICABLE SUPERVISORY FEES AND
13 ASSESSMENTS DEPOSITED.—The Director shall de-
14 posit all amounts received from assessments under
15 subsection (b)(3) in the CFPA Depository Fund.

16 (e) CONSUMER FINANCIAL PROTECTION AGENCY
17 NONDEPOSITORY INSTITUTION FUND.—

18 (1) ESTABLISHMENT.—

19 (A) IN GENERAL.—There is established in
20 the Treasury a separate fund called the Con-
21 sumer Financial Protection Agency Nondeposi-
22 tory Institution Fund (hereafter in this section
23 referred to as the “CFPA Nondepository
24 Fund”).

1 (B) AMOUNTS IN FUND NOT AVAILABLE
2 FOR CERTAIN PURPOSES.—Other than pursuant
3 to subsection (f), amounts on deposit in the
4 CFPA Nondepository Fund shall not be used
5 for the supervision and examination of deposi-
6 tory institution covered persons.

7 (2) ALL APPLICABLE SUPERVISORY FEES AND
8 ASSESSMENTS DEPOSITED.—The Director shall de-
9 posit all amounts received from assessments under
10 subsection (b)(4) in the CFPA Nondepository Fund.

11 (f) GENERAL PROVISIONS RELATING TO FUNDS.—

12 (1) MAINTENANCE OF FUNDS.—

13 (A) AGENCY FUNDS MAINTAINED BY
14 TREASURY.—The Consumer Financial Protec-
15 tion Agency Depository Institution Fund estab-
16 lished under subsection (d) and the Consumer
17 Financial Protection Agency Nondepository In-
18 stitution Fund established under subsection (e)
19 shall each be—

20 (i) maintained and administered by
21 the Secretary; and

22 (ii) maintained separately and not
23 commingled.

24 (B) AGENCY'S AUTHORITY.—Any provision
25 of this title forbidding the commingling or use

1 of the CFPA Depository Fund and the CFPA
2 Nondepository Fund shall not be construed as
3 limiting or impairing the authority of the Agen-
4 cy to use the same facilities and resources in
5 the course of conducting supervisory and regu-
6 latory functions with respect to depository insti-
7 tutions and nondepository institutions, or to in-
8 tegrate such functions.

9 (C) ACCOUNTING REQUIREMENTS.—

10 (i) ACCOUNTING FOR USE OF FACILI-
11 TIES AND RESOURCES.—The Agency shall
12 keep a full and complete accounting of all
13 costs and expenses associated with the use
14 of any facility or resource used in the
15 course of any function specified in sub-
16 paragraph (B) and shall allocate, in the
17 manner provided in subparagraph (D), any
18 such costs and expenses incurred by the
19 Agency—

20 (I) with respect to depository in-
21 stitution covered persons, to the
22 CFPA Depository Fund; and

23 (II) with respect to nondepository
24 covered persons, to the CFPA Non-
25 depository fund.

1 (D) ALLOCATION OF ADMINISTRATIVE EX-
2 PENSES.—Any personnel, administrative, or
3 other overhead expense of the Agency shall be
4 allocated—

5 (i) fully to the CFPA Depository
6 Fund if the expense was incurred directly
7 as a result of the Agency's responsibilities
8 solely with respect to depository institution
9 covered persons;

10 (ii) fully to the CFPA Nondepository
11 Fund, if the expense was incurred directly
12 as a result of the Agency's responsibilities
13 solely with respect to nondepository cov-
14 ered persons;

15 (iii) between the CFPA Depository
16 Fund and the CFPA Nondepository Fund,
17 in amounts reflecting the relative degree to
18 which the expense was incurred that are
19 reasonably related as a general matter to
20 activities of depository institution covered
21 persons, and nondepository covered per-
22 sons; and

23 (iv) if the Director is unable to make
24 a complete allocation under clause (i), (ii),
25 or (iii), between the CFPA Depository

1 Fund and the CFPA Nondepository Fund,
2 in amounts reflecting the relative propor-
3 tion that, as of the end of the preceding
4 year—

5 (I) the aggregate assets of all de-
6 pository institution covered persons
7 bears to the aggregate assets of all
8 covered persons; and

9 (II) the aggregate assets of all
10 nondepository covered persons bears
11 to the aggregate assets of all covered
12 persons.

13 (E) AGENCY FUND.—The “Agency fund”
14 means the Consumer Financial Protection
15 Agency Depository Institution Fund established
16 under subsection (d), and, the Consumer Fi-
17 nancial Protection Agency Nondepository Insti-
18 tution Fund established under subsection (e),
19 and the Consumer Financial Protection Agency
20 Civil Penalty Fund established under subsection
21 (g).

22 (2) INVESTMENT.—

23 (A) AMOUNTS IN FUNDS MAY BE IN-
24 VESTED.—The Director may request the Sec-
25 retary to invest the portion of any Agency fund

1 that, in the Director's judgment, is not required
2 to meet the current needs of such fund.

3 (B) ELIGIBLE INVESTMENTS.—Invest-
4 ments pursuant to subparagraph (A) shall be
5 made by the Secretary in obligations of the
6 United States or obligations that are guaran-
7 teed as to principal and interest by the United
8 States, with maturities suitable to the needs of
9 the Agency fund involved, as determined by the
10 Director.

11 (C) INTEREST AND PROCEEDS CRED-
12 ITED.—The interest on, and the proceeds from
13 the sale or redemption of, any obligations held
14 in the respective Agency Fund shall be credited
15 to and form a part of the respective Agency
16 Fund.

17 (3) EXCEPTION.—Notwithstanding paragraph
18 (1), an attorney's activities related to assisting an-
19 other person in preventing a foreclosure shall be
20 subject to this title except to the extent such activi-
21 ties constitute, or are incidental to, the provision of
22 legal services to a client of the attorney.

23 (g) PENALTIES AND FINES.—

24 (1) ESTABLISHMENT OF VICTIMS RELIEF
25 FUND.—There is established in the Treasury of the

1 United States a fund to be known as the “Consumer
2 Financial Protection Agency Civil Penalty Fund”
3 (hereafter in this section referred to as the “Civil
4 Penalty Fund”).

5 (2) DEPOSITS.—If the Agency obtains a civil
6 penalty against any person in any judicial or admin-
7 istrative action under this title, any law or authority
8 transferred under subtitles F and H, or any enumer-
9 ated consumer law, the Agency shall deposit into the
10 Civil Penalty Fund the amount of the penalty col-
11 lected.

12 (3) PAYMENT TO VICTIMS.—Amounts in the
13 Civil Penalty Fund shall be available to the Director,
14 without fiscal year limitation, for payments to the
15 victims of activities for which civil penalties have
16 been imposed under this title, the law and authori-
17 ties transferred under subtitles F and H, or any
18 enumerated consumer law.

19 (4) FINANCIAL EDUCATION AND COUNSELING
20 PROGRAM.—

21 (A) IN GENERAL.—To the extent such vic-
22 tims cannot be located or such payments are
23 otherwise not practicable, 5 percent of the Vic-
24 tims Relief Fund shall be transferred, up to
25 \$10,000,000 on an annual basis, to the Sec-

1 retary of the Treasury so that the Secretary
2 may carry out the Financial Education and
3 Counseling Grant Program established under
4 section 1132 of the Housing and Economic Re-
5 covery Act of 2008 (12 U.S.C. 1701).

6 (B) MEMORANDUM OF UNDERSTANDING.—

7 Not later than 12 months after the date of en-
8 actment of this subtitle, the Director shall enter
9 into a memorandum of understanding with the
10 Secretary of the Treasury to coordinate the re-
11 lease of Civil Penalty Fund amounts under sub-
12 paragraph (A).

13 (C) ASSISTANCE FOR INDIVIDUALS AT FI-
14 NANCIAL RISK.—Section 1132 of the Housing
15 and Economic Recovery Act of 2008 (12 U.S.C.
16 1701) is amended—

17 (i) in subsection (a), by striking “pro-
18 spective homebuyers” each place that term
19 appears and inserting “individuals at fi-
20 nancial risk”;

21 (ii) in subsection (b)—

22 (I) in paragraph (1), by striking
23 “prospective homebuyers” and insert-
24 ing “individuals at financial risk”;
25 and

1 (II) by adding at the end the fol-
2 lowing:

3 “(3) DETERMINATION OF FINANCIAL RISK.—
4 For purposes of this section, the Director of the
5 Consumer Financial Protection Agency shall estab-
6 lish the criteria used to determine whether an indi-
7 vidual is at financial risk, and the Secretary shall
8 use such criteria when selecting organizations under
9 paragraph (2).”; and

10 (iii) in subsection (c)(1)—

11 (I) in subparagraph (A), by strik-
12 ing “or”;

13 (II) in subparagraph (B), by
14 striking the period and inserting “;
15 or”; and

16 (III) by adding at the end the
17 following:

18 “(C) a nonprofit corporation that—

19 “(i) is exempt from taxation under
20 section 501(c)(3) of the Internal Revenue
21 Code of 1986; and

22 “(ii) specializes or has expertise in
23 working with individuals at financial
24 risk.”.

1 (h) ASSESSMENTS FOR CERTAIN NONDEPOSITORY
2 INSTITUTION COVERED PERSONS.—

3 (1) IN GENERAL.—Notwithstanding any other
4 provision of this Act, a nondepository institution
5 covered person shall not be subject to assessments
6 by the Agency if—

7 (A) the assets that are financial activities
8 of that nondepository covered person represent
9 less than a substantial portion of its total as-
10 sets; and

11 (B) the gross revenues derived from finan-
12 cial activities of that nondepository covered per-
13 son are less than a substantial portion of its
14 gross revenues.

15 (2) EXTENSIVE CONSUMER FINANCIAL PROD-
16 UCTS OR SERVICES OPERATIONS.—Paragraph (1)
17 shall not apply to nondepository institution covered
18 person that the Director determines has a level of
19 assets or revenues derived from financial activities,
20 a number of transactions in consumer financial
21 products or services, or a number of accounts relat-
22 ing to consumer financial products or services that
23 the Director determines represents an extensive con-
24 sumer financial products or services operation.

1 **SEC. 4112. AMENDMENTS RELATING TO OTHER ADMINIS-**
2 **TRATIVE PROVISIONS.**

3 (a) ACT OF OCTOBER 28, 1974.—Section 111 of
4 Public Law 93–495 (12 U.S.C. 250) is amended by insert-
5 ing “the Consumer Financial Protection Agency,” after
6 “Federal Deposit Insurance Corporation,”.

7 (b) PAPERWORK REDUCTION ACT.—Section 2(5) of
8 the Paperwork Reduction Act (44 U.S.C. 3502(5)) by in-
9 serting “the Consumer Financial Protection Agency,”
10 after “the Securities and Exchange Commission,”.

11 **SEC. 4113. OVERSIGHT BY GAO.**

12 (a) AUTHORITY.—The Comptroller General may
13 audit the programs, activities, receipts, expenditures, and
14 financial transactions of the Agency and of any agents and
15 representatives of the Agency as related to the agent’s or
16 representative’s activities on behalf of or under authority
17 of the Agency.

18 (b) ACCESS.—Notwithstanding any other provision of
19 law, the Comptroller General shall have access, upon re-
20 quest, to any information, data, schedules, books, ac-
21 counts, financial records, reports, files, electronic commu-
22 nications, or other papers, things, or property belonging
23 to or in use by the Agency, or any vehicles established
24 by the Agency under this Act, and to the directors, offi-
25 cers, employees, independent public accountants, financial
26 advisors, staff, working groups, and agents and represent-

1 atives of the Agency (as related to the agent's or rep-
2 resentative's activities on behalf of the Agency) or any ve-
3 hicle established by the Agency at such reasonable time
4 as the Comptroller General may request. The Comptroller
5 General may make and retain copies of such books, ac-
6 counts, and other records as the Comptroller General
7 deems appropriate.

8 **SEC. 4114. EFFECTIVE DATE.**

9 This subtitle shall take effect on the date of the en-
10 actment of this title.

11 **Subtitle B—General Powers of the**
12 **Director and Agency**

13 **SEC. 4201. MANDATE AND OBJECTIVES.**

14 (a) MANDATE.—The Director shall seek to promote
15 transparency, simplicity, fairness, accountability, and
16 equal access in the market for consumer financial products
17 or services.

18 (b) OBJECTIVES.—The Director may exercise the au-
19 thorities granted in this title, in the enumerated consumer
20 laws, and transferred under subtitles F and H for the pur-
21 poses of ensuring that, with respect to consumer financial
22 products or services—

23 (1) consumers have and can use the informa-
24 tion they need to make responsible decisions about
25 consumer financial products or services;

1 (2) consumers are protected from abuse, unfair-
2 ness, deception, and discrimination;

3 (3) markets for consumer financial products or
4 services operate fairly and efficiently with ample
5 room for sustainable growth and innovation; and

6 (4) traditionally underserved consumers and
7 communities have equal access to responsible finan-
8 cial services.

9 **SEC. 4202. AUTHORITIES.**

10 (a) IN GENERAL.—The Director may exercise the au-
11 thorities granted in this title, in the enumerated consumer
12 laws, and transferred under subtitles F and H, to admin-
13 ister, enforce, and otherwise implement the provisions of
14 this title, the authorities transferred in subtitles F and
15 H, and the enumerated consumer laws.

16 (b) RULEMAKING, ORDERS, AND GUIDANCE.—

17 (1) IN GENERAL.—The Director may prescribe
18 regulations and issue orders and guidance as may be
19 necessary or appropriate to enable it to administer
20 and carry out the purposes and objectives of this
21 title, the authorities transferred under subtitles F
22 and H, and the enumerated consumer laws, and to
23 prevent evasions of this title, any such authority,
24 and any such law.

1 (2) STANDARDS FOR RULEMAKING.—In pre-
2 scribing a regulation under this title or pursuant to
3 the authorities transferred under subtitles F and H
4 or the enumerated consumer laws, the Director
5 shall—

6 (A) consider the potential benefits and
7 costs to consumers, covered persons, and the
8 Federal Government, including the potential re-
9 duction of consumers' access to consumer finan-
10 cial products or services, resulting from such
11 regulation; and

12 (B) consult with the Federal banking agen-
13 cies, State bank supervisors, the Federal Trade
14 Commission, or other Federal agencies, as ap-
15 propriate, regarding the consistency of a pro-
16 posed regulation with prudential, consumer pro-
17 tection, civil rights, market, or systemic objec-
18 tives administered by such agencies or super-
19 visors and whether such regulation will have an
20 inconsistent effect on nondepository institution
21 covered persons and depository institution cov-
22 ered persons.

23 (3) EXEMPTIONS.—

24 (A) IN GENERAL.—The Director, by regu-
25 lation or order, may conditionally or uncondi-

tionally exempt any covered person, service provider, or any consumer financial product or service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any regulation under any such provision or law, as the Director deems necessary or appropriate to carry out the purposes and objectives of this title taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption by regulation or order as permitted in subparagraph (A), the Director shall as appropriate take into consideration the following:

(i) The total assets of the covered person.

(ii) The volume of transactions involving consumer financial products or services in which the covered person engages.

(iii) The extent to which the covered person engages in 1 or more financial activities.

(iv) Existing laws or regulations which are applicable to the consumer financial

1 product or service and the extent to which
2 such laws or regulations provide consumers
3 with adequate protections.

4 (C) RULE OF CONSTRUCTION.—No provi-
5 sion of this section shall be construed as alter-
6 ing, amending, or affecting any authority under
7 sections 304(a), 304(i), 305(a), and 306(b) of
8 the Home Mortgage Disclosure Act of 1975 and
9 sections 703(a)(1), 703(a)(2), 703(a)(3),
10 705(f), and 705(g) of the Equal Credit Oppor-
11 tunity Act for determining whether a covered
12 person should be provided an exemption.

13 (c) EXAMINATIONS AND REPORTS.—

14 (1) IN GENERAL.—Except as provided under
15 section 4203, the Director may on a periodic basis
16 examine a covered person or service provider, with
17 respect to any consumer financial product or service,
18 for purposes of ensuring compliance with the re-
19 quirements of this title, the enumerated consumer
20 laws, and any regulations prescribed by the Director
21 under this title or pursuant to the authorities trans-
22 ferred under subtitles F and H, and enforcing com-
23 pliance with such requirements.

24 (2) EXAMINATION PROGRAM.—The Director
25 shall exercise any authority of the Director under

1 paragraph (1) in a manner designed to ensure that
2 such authorities are exercised with respect to cov-
3 ered persons or service providers, without regard to
4 charter or corporate form, based on the Director's
5 assessment of the risks posed to consumers in the
6 relevant product markets and geographic markets,
7 and taking into consideration, as applicable, the fol-
8 lowing factors:

9 (A) The asset size of the covered persons.

10 (B) The volume of transactions involving
11 consumer financial products or services in
12 which the covered persons engage.

13 (C) The risks to consumers created by the
14 provision of such consumer financial products
15 or services.

16 (D) In the case of State-chartered institu-
17 tions, the extent to which such institutions are
18 subject to oversight by State authorities for
19 consumer protection.

20 (3) COORDINATION.—The Director shall coordi-
21 nate the Agency's supervisory activities with the su-
22 pervisory activities conducted by the Federal bank-
23 ing agencies and the State bank supervisors, includ-
24 ing establishing their respective schedules for exam-

1 ining covered persons and requirements regarding
2 reports to be submitted by covered persons.

3 (4) REPORTS.—The Director may require re-
4 ports from a covered person for purposes of ensuring
5 compliance with the requirements of this title, the
6 enumerated consumers laws, and any regulation pre-
7 scribed by the Director under this title or pursuant
8 to the authorities transferred under subtitles F and
9 H, and enforcing compliance with such require-
10 ments.

11 (5) CONTENT OF REPORTS.—The reports au-
12 thorized in paragraph (4) may include such informa-
13 tion as necessary to keep the Agency informed as
14 to—

15 (A) the compliance systems or procedures
16 of the covered person or any affiliate thereof,
17 with applicable provisions of this title or any
18 other law that the Agency has jurisdiction to
19 enforce; and

20 (B) matters related to the provision of con-
21 sumer financial products or services including
22 the servicing or maintenance of accounts or ex-
23 tensions of credit.

24 (6) USE OF EXISTING REPORTS.—In general,
25 the Agency shall, to the fullest extent possible, use—

1 (A) reports that a covered person, or any
2 affiliate thereof, or any service provider to such
3 covered person or affiliate, has provided or been
4 required to provide to a Federal or State agen-
5 cy; and

6 (B) information that has been reported
7 publicly.

8 (7) ACCESS BY THE AGENCY TO REPORTS OF
9 OTHER REGULATORS.—

10 (A) EXAMINATION AND FINANCIAL CONDI-
11 TION REPORTS.—Upon providing reasonable as-
12 surances of confidentiality, the Agency shall
13 have access to any report of examination or fi-
14 nancial condition, including a report containing
15 data regarding consumer complaints, made by a
16 Federal banking agency or other Federal agen-
17 cy having supervision of a covered person, or a
18 service provider, (other than returns and return
19 information described in section 6103 of the In-
20 ternal Revenue Code of 1986) and to all revi-
21 sions made to any such report.

22 (B) PROVISION OF OTHER REPORTS TO
23 AGENCY.—In addition to the reports described
24 in subparagraph (A), a Federal banking agency
25 may, in its discretion, furnish to the Agency

1 any other report or other confidential super-
2 visory information concerning any insured de-
3 pository institution, any credit union, or other
4 entity examined by such agency under authority
5 of any Federal law.

6 (8) ACCESS BY OTHER REGULATORS TO RE-
7 PORTS OF THE AGENCY.—

8 (A) EXAMINATION REPORTS.—Upon pro-
9 viding reasonable assurances of confidentiality,
10 a Federal banking agency, a State regulator, or
11 any other Federal agency having supervision of
12 a covered person shall have access to any report
13 of examination made by the Agency with re-
14 spect to the covered person or service provider,
15 and to all revisions made to any such report.

16 (B) PROVISION OF OTHER REPORTS TO
17 OTHER REGULATORS.—In addition to the re-
18 ports described in paragraph (A), the Agency
19 may, in the discretion of the Agency, furnish to
20 a Federal banking agency any other report or
21 other confidential supervisory information con-
22 cerning any insured depository institution, any
23 credit union, or other entity examined by the
24 Agency under authority of any Federal law.

1 (9) PRESERVATION OF AUTHORITY.—No provi-
2 sion in paragraph (3) shall be construed as pre-
3 venting the Agency from conducting an examination
4 authorized by this title or under the authorities
5 transferred under subtitles F and H or pursuant to
6 any enumerated consumer law. No provision of this
7 title shall be construed as limiting the authority of
8 the Director to require reports from a covered per-
9 son, as permitted under paragraph (4), regarding in-
10 formation owned or under the control of the covered
11 person, regardless of whether such information is
12 maintained, stored, or processed by another person.

13 (10) REPORTS OF TAX LAW NONCOMPLI-
14 ANCE.—The Director shall provide the Commis-
15 sioner of Internal Revenue with any report of exam-
16 ination or related information identifying possible
17 tax law noncompliance.

18 (11) DELEGATION.—

19 (A) IN GENERAL.—The Director may dele-
20 gate the examination authorities of the Agency
21 under this title to any appropriate agency, as
22 defined in section 4203, for any insured deposi-
23 tory institution or insured credit union that is
24 not subject to section 4203 upon a petition by
25 an appropriate agency.

1 (B) STANDARD FOR DELEGATION.—The
2 Director shall provide such delegation if, in the
3 Director’s sole discretion, the Director deter-
4 mines that—

5 (i) the delegation is consistent with
6 the public interest;

7 (ii) the appropriate agency is capable
8 of enforcing compliance with this title, and
9 with any regulation prescribed under this
10 title; and

11 (iii) such capability is comparable to
12 or superior to the capability of the Agency,
13 in terms of expertise, demonstrated com-
14 mitment, and overall effectiveness, in en-
15 forcing such compliance.

16 (C) EFFECT OF DELEGATION.—The in-
17 sured depository institution or insured credit
18 union shall be subject to the examination proc-
19 ess described in section 4203(b).

20 (D) NO EFFECT ON ENFORCEMENT.—The
21 Director’s delegation authority under this para-
22 graph shall not apply to the Director’s enforce-
23 ment responsibilities under subsection (e).

24 (d) EXCLUSIVE RULEMAKING AND EXAMINATION
25 AUTHORITY.—Notwithstanding any other provision of

1 Federal law other than section 4203 and subsections (f)
2 and (h) of this section, to the extent that a Federal law
3 authorizes the Director and another Federal agency to
4 prescribe regulations, issue guidance, conduct examina-
5 tions, or require reports under a provision of that law for
6 purposes of assuring compliance with this title, a provision
7 of any enumerated consumer law, any provision of the
8 laws for which authorities were transferred under subtitles
9 F and H, and any regulations prescribed under this title
10 or pursuant to any such authority, the Director shall have
11 the exclusive authority under that provision of law to pre-
12 scribe regulations, issue guidance, conduct examinations,
13 require reports, or issue exemptions with regard to any
14 person subject to that law and with respect to any activity
15 regulated under any enumerated consumer law.

16 (e) PRIMARY ENFORCEMENT AUTHORITY.—

17 (1) THE AGENCY TO HAVE PRIMARY ENFORCE-
18 MENT AUTHORITY.—To the extent that a Federal
19 law authorizes the Agency and another Federal
20 agency to enforce a provision of a law, the Agency
21 shall have primary enforcement authority to enforce
22 the provision of that Federal law with respect to any
23 person in accordance with this subsection.

24 (2) COORDINATION WITH THE FEDERAL TRADE
25 COMMISSION.—

1 (A) NOTICE.—If the Federal Trade Com-
2 mission is authorized to enforce any Federal
3 law described in paragraph (1), or a regulation
4 prescribed under any such Federal law, either
5 the Agency or the Federal Trade Commission
6 shall serve written notice to the other of any en-
7 forcement action prior to initiating such an en-
8 forcement action, except that if the agency or
9 commission filing the action determines that
10 prior notice is not feasible, that agency or com-
11 mission may provide notice immediately upon
12 initiating such enforcement action.

13 (B) INTERVENTION BY EITHER ENTITY.—
14 Upon receiving any notice under subparagraph
15 (A) with respect to an enforcement action, the
16 Agency or Federal Trade Commission may in-
17 tervene in such enforcement action, and upon
18 intervening—

19 (i) be heard on all matters arising in
20 such enforcement action; and

21 (ii) file petitions for appeal in such
22 enforcement action.

23 (C) PENDENCY OF ACTION.—Whenever a
24 civil action has been instituted by or on behalf
25 of the Agency or the Federal Trade Commission

1 for any violation of any Federal law described
2 in paragraph (1), or a regulation prescribed
3 under any such Federal law, the other entity
4 may not, during the pendency of that action, in-
5 stitute a civil action under such law or regula-
6 tion against any defendant named in the com-
7 plaint in such pending action for any violation
8 alleged in the complaint.

9 (D) AGREEMENTS BETWEEN ENTITIES.—

10 (i) NEGOTIATIONS AUTHORIZED.—

11 The Agency and the Federal Trade Com-
12 mission may negotiate an agreement to es-
13 tablish procedures to ensure that the en-
14 forcement actions of the 2 agencies are ap-
15 propriately coordinated.

16 (ii) SCOPE OF NEGOTIATED AGREE-

17 MENT.—The terms of any agreement nego-
18 tiated pursuant to clause (i) may modify or
19 supersede the provisions of subparagraphs
20 (A), (B), and (C).

21 (3) COORDINATION WITH OTHER FEDERAL

22 AGENCY.—

23 (A) REFERRAL.—Any Federal agency

24 (other than the Federal Trade Commission)

25 that is authorized to enforce a Federal law de-

1 scribed in paragraph (1) may recommend in
2 writing to the Director that the Agency initiate
3 an enforcement proceeding to the extent the
4 Agency is authorized by that Federal law or by
5 this title. The recommendation shall be accom-
6 panied by a written explanation of the concerns
7 giving rise to the recommendation.

8 (B) BACKSTOP ENFORCEMENT AUTHORITY
9 OF OTHER FEDERAL AGENCY.—If the Agency
10 does not, before the end of the 120-day period
11 beginning on the date on which the Director re-
12 ceives a recommendation under subparagraph
13 (A), initiate an enforcement proceeding, the
14 other agency referred to in subparagraph (A)
15 may initiate an enforcement proceeding as per-
16 mitted by that Federal law.

17 (4) INSTITUTIONS SUBJECT TO SPECIAL EXAM-
18 INATION AND ENFORCEMENT PROCEDURES.—This
19 subsection shall not apply to institutions subject to
20 section 4203.

21 (f) PRESERVATION OF OTHER AUTHORITY.—

22 (1) ATTORNEY GENERAL.—No provision of this
23 title shall be construed as affecting any authority of
24 the Attorney General.

1 (2) SECRETARY OF THE TREASURY.—No provi-
2 sion of this title shall be construed as affecting any
3 authority of the Secretary of the Treasury, including
4 with respect to prescribing regulations, initiating en-
5 forcement proceedings, or taking other actions with
6 respect to a person providing tax planning or tax
7 preparation services.

8 (3) FAIR HOUSING ACT.—No provision of this
9 title shall be construed as affecting any authority
10 arising under the Fair Housing Act.

11 (g) EFFECT ON OTHER AUTHORITY.—No provision
12 of this section or section 4203 shall be construed as modi-
13 fying or limiting the authority of any appropriate Federal
14 banking agency or the Director or Agency to interpret,
15 or take enforcement action under, any law or regulation
16 the interpretation or enforcement of which is committed
17 to the banking agency or the Director or Agency, which
18 shall include, in the case of the Director and the Agency,
19 this title, the enumerated consumer laws, and the regula-
20 tions prescribed under this title or such laws.

21 (h) PRESERVATION OF FEDERAL TRADE COMMIS-
22 SION AUTHORITY.—No provision of this title shall be con-
23 strued as modifying, limiting, or otherwise affecting the
24 authority of the Federal Trade Commission under the

1 Federal Trade Commission Act or other laws other than
2 the enumerated consumer laws.

3 (i) PRESERVATION OF FARM CREDIT ADMINISTRA-
4 TION AUTHORITY.—No provision of this title shall be con-
5 strued as modifying, limiting, or otherwise affecting the
6 authority of the Farm Credit Administration.

7 **SEC. 4203. EXAMINATION AND ENFORCEMENT FOR SMALL**
8 **BANKS, THRIFTS, AND CREDIT UNIONS.**

9 (a) SCOPE OF INSTITUTIONS SUBJECT TO THIS SEC-
10 TION.—

11 (1) INSTITUTIONS COVERED.—This section
12 shall apply to—

13 (A) any insured depository institution with
14 total assets of \$10,000,000,000 or less; or

15 (B) any insured credit union with total as-
16 sets of \$10,000,000,000 or less.

17 (2) APPROPRIATE AGENCY.—For purposes of
18 this title, the term “appropriate agency” means—

19 (A) in the case of an insured depository in-
20 stitution, the appropriate Federal banking
21 agency as such term is defined in section 3 of
22 the Federal Deposit Insurance Act; and

23 (B) in the case of an insured credit union,
24 the National Credit Union Administration.

25 (b) EXAMINATIONS.—

1 (1) IN GENERAL.—The appropriate agency
2 shall on a periodic basis examine, or require reports
3 from, an institution referred to in subsection (a) for
4 purposes of ensuring compliance with the require-
5 ments of this title, the enumerated consumer laws,
6 and any regulation prescribed by the Director under
7 this title or pursuant to the authorities transferred
8 under subtitles F and H, and enforcing compliance
9 with such requirements.

10 (2) AGENCY ROLE IN EXAMINATIONS.—

11 (A) The appropriate agency shall provide
12 all reports, records, and documentation related
13 to the examination process to the Agency on a
14 timely and ongoing basis.

15 (B) The Director and Agency may, at its
16 discretion, include an examiner on any examina-
17 tion conducted under paragraph (1). The ap-
18 propriate agency shall involve such Agency ex-
19 aminer in the entire examination process, in-
20 cluding setting the scope of an examination,
21 participating in the examination, and providing
22 input on the examination report, matters re-
23 quiring attention and examination ratings.

24 (c) ENFORCEMENT.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of this title other than this subsection, the
3 appropriate agency shall have primary authority to
4 enforce violations identified at institutions referred
5 to in subsection (a) of any of the requirements of
6 this title, the enumerated consumers laws, and any
7 regulation prescribed by the Director under this title
8 or pursuant to the authorities transferred under
9 subtitles F and H.

10 (2) COORDINATION WITH APPROPRIATE AGEN-
11 CY.—

12 (A) REFERRAL.—

13 (i) IN GENERAL.—The Agency may
14 recommend in writing to the appropriate
15 agency that the appropriate agency initiate
16 an enforcement proceeding to the extent
17 the appropriate agency is authorized by
18 that Federal law or by this title.

19 (ii) EXPLANATION.—Any rec-
20 ommendation under clause (i) shall be ac-
21 companied by a written explanation of the
22 concerns giving rise to the recommenda-
23 tion.

24 (B) BACKSTOP ENFORCEMENT AUTHORITY
25 OF AGENCY.—If the appropriate agency does

1 not, before the end of the 120-day period begin-
2 ning on the date on which the appropriate
3 agency receives a recommendation under sub-
4 paragraph (A), initiate an enforcement pro-
5 ceeding, the Agency may initiate an enforce-
6 ment proceeding as permitted by Federal law.

7 (d) ACTIONS ARISING OUT OF CONSUMER COM-
8 PLAIN SYSTEM.—Notwithstanding any provision of this
9 section, if through the consumer complaint system admin-
10 istered by the Agency under section 4105(c)(3), the Direc-
11 tor has reasonable cause to believe that an institution re-
12 ferred to in subsection (a) demonstrates noncompliance
13 with any provision of this title, the enumerated consumer
14 laws, or any regulation prescribed by the Director under
15 this title or pursuant to the authorities transferred under
16 subtitles F and H, the Director may directly investigate
17 such institution for such noncompliance and take any ac-
18 tion permitted under subtitle E that the Director deems
19 appropriate.

20 (e) REMOVAL OF APPROPRIATE AGENCY FOR PAR-
21 TICULAR INSTITUTION.—

22 (1) HEIGHTENED SUPERVISION.—The Direc-
23 tor—

1 (A) may provide notice to an appropriate
2 agency that the Director is considering issuing
3 a removal order under paragraph (2); and

4 (B) shall have an Agency examiner partici-
5 pate in the examination process under sub-
6 section (b) for at least 1 examination cycle.

7 (2) REMOVAL BY ORDER.—If, after the comple-
8 tion of at least 1 examination cycle following the
9 provision of notice to an appropriate agency under
10 paragraph (1), the Director determines in writing
11 that the appropriate agency has failed to adequately
12 conduct consumer compliance examinations or bring
13 appropriate enforcement actions against an institu-
14 tion referred to in subsection (a), the Director may
15 order the removal of the appropriate agency from its
16 responsibilities under this section for such institu-
17 tion.

18 (3) AGENCY AUTHORITY UPON REMOVAL.—
19 Upon removal pursuant to paragraph (2), the Agen-
20 cy shall examine and enforce against such institution
21 as if the institution were subject to section 4202.

22 (4) EFFECTIVE DATE.—An order under para-
23 graph (2) shall take effect 30 days after a deter-
24 mination by the Secretary of the Treasury pursuant
25 to paragraphs (5) and (6).

1 (5) AUTOMATIC APPEAL.—An order issued by
2 the Director pursuant to paragraph (2) shall be
3 automatically appealed to the Secretary.

4 (6) DECISION BY THE SECRETARY OF THE
5 TREASURY.—

6 (A) DETERMINATION.—The order issued
7 pursuant to paragraph (2) shall be deemed af-
8 firmed unless the Secretary of the Treasury de-
9 nies the determination of the Director within
10 120 days of the issuance of the order pursuant
11 to paragraph (2).

12 (B) RULE OF CONSTRUCTION.—Nothing in
13 subparagraph (A) shall be construed as prohib-
14 iting the Secretary of the Treasury from mak-
15 ing a determination to either affirm or deny an
16 order issued pursuant to paragraph (2) prior to
17 the passage of the time period in subparagraph
18 (A).

19 (7) REGULATIONS.—By the transfer date, the
20 Secretary shall issue regulations that establish the
21 standards the Director shall apply in making a de-
22 termination to remove an appropriate agency and
23 the process, procedures, and standards for an ap-
24 peal. Such standards shall require the Director to
25 consider at least the following in issuing an order re-

1 moving an appropriate agency for an institution re-
2 ferred to in subsection (a)(1):

3 (A) Reports of examination of such institu-
4 tion.

5 (B) Any enforcement actions taken by an
6 appropriate agency against such institution and
7 the results of those actions.

8 (C) Consumer complaints issued against
9 such institution.

10 (D) Actions taken by State attorneys gen-
11 eral and private rights of action against such
12 institution.

13 (f) POLICIES AND PROCEDURES.—Within 180 days
14 after the designated transfer date, the Agency and the ap-
15 propriate agency shall develop policies and procedures for
16 implementing this section.

17 (g) ASSESSMENTS.—

18 (1) LIMITATION ON CERTAIN FEES.—The Agen-
19 cy shall not assess examination fees on an institution
20 referred to in subsection (a).

21 (2) RULE OF CONSTRUCTION.—No provision of
22 this section shall be construed as preventing the ap-
23 propriate agency from assessing fees on an institu-
24 tion referred to in paragraph (1) to meet the appro-
25 priate agency's expenses for carrying out such exam-

1 ination and supervision responsibilities pursuant to
2 this section.

3 (h) ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL
4 INSTITUTIONS.—

5 (1) ESTABLISHMENT; PURPOSE.—There is es-
6 tablished in the Agency an office to be known as the
7 “Assistive Division for Community Financial Institu-
8 tions” to advise the Director on the impact of Agen-
9 cy policies and regulations on community financial
10 institutions and to help ensure that the policies and
11 regulations of the Agency do not unduly burden
12 community financial institutions.

13 (2) ADDITIONAL DUTIES.—The Assistive Divi-
14 sion for Community Financial Institutions shall
15 also—

16 (A) provide assistance to and respond to
17 inquiries from community financial institutions
18 regarding policies of the Agency and the effects
19 of such policies on community financial institu-
20 tions;

21 (B) provide educational materials, training
22 aides, and support to community financial insti-
23 tutions with respect to any new regulatory obli-
24 gations the Agency establishes during the initial
25 rule-making period;

1 (C) establish and maintain a toll-free tele-
2 phone number, to be available at least 8 hours
3 a day and 7 days a week, at which community
4 financial institution may make inquiries and re-
5 ceive assistance under subparagraph (A); and

6 (D) perform other duties and exercise such
7 other powers set by the Director.

8 **SEC. 4204. SIMULTANEOUS AND COORDINATED SUPER-**
9 **VISORY ACTION.**

10 (a) EXAMINATIONS.—A Federal banking agency and
11 the Agency shall, with respect to each insured depository
12 institution, credit union, or other covered person super-
13 vised by the Federal banking agency and the Agency, re-
14 spectively—

15 (1) coordinate the scheduling of examinations of
16 the insured depository institution, and credit union,
17 or other covered person;

18 (2) conduct simultaneous examinations of each
19 insured depository institution, credit union or other
20 covered person, unless such institution requests ex-
21 aminations to be conducted separately;

22 (3) share each draft report of examination with
23 the other agency and permit the receiving agency a
24 reasonable opportunity (which shall not be less than
25 a period of 30 days after the date of receipt) to com-

1 ment on the draft report before such report is made
2 final; and

3 (4) prior to issuing a final report of examina-
4 tion or taking supervisory action, an agency shall
5 take into consideration concerns, if any, raised in
6 the comments made by the other agency.

7 (b) COORDINATION WITH STATE BANK SUPER-
8 VISORS.—The Agency shall pursue arrangements and
9 agreements with State bank supervisors to coordinate ex-
10 aminations consistent with subsection (a).

11 (c) RESOLUTION OF CONFLICT IN SUPERVISION.—

12 (1) REQUEST OF DEPOSITORY INSTITUTION.—

13 (A) IN GENERAL.—If the proposed mate-
14 rial supervisory determinations of the Agency
15 and a Federal banking agency are conflicting,
16 an insured depository institution, credit union,
17 or other covered person may request the agen-
18 cies to coordinate and present a joint statement
19 of coordinated supervisory action.

20 (B) LIMITATION.—A request of an insured
21 depository institution, credit union, or other
22 covered person shall not be used to appeal a su-
23 pervisory rating or determination by the Agency
24 or a Federal banking agency.

1 (2) JOINT STATEMENT.—The agencies receiving
2 a request from an insured depository institution,
3 credit union, or covered person under paragraph (1)
4 shall provide a joint statement resolving the conflict
5 under such subparagraph before the end of the 30-
6 day period beginning on the date the agencies re-
7 ceive such request.

8 (d) APPEALS TO GOVERNING PANEL.—

9 (1) IN GENERAL.—If the agencies receiving a
10 request from an insured depository institution, credit
11 union, or covered person under subsection (c)(1) do
12 not issue a joint statement under subsection (c)(2),
13 or if either agency takes or attempts to take any su-
14 pervisory action relating to the request for the joint
15 statement without the consent of the other agency,
16 the insured depository institution, credit union, or
17 other covered person may institute an appeal to a
18 governing panel under this subsection.

19 (2) TIMETABLE.—Any appeal under paragraph
20 (1) with regard to a failure of agencies to issue a
21 joint statement shall be filed before the end of the
22 30-day period beginning at the end of the 30-day pe-
23 riod during which such joint statement was due
24 under subsection (c)(2).

1 (e) COMPOSITION OF GOVERNING PANEL.—The gov-
2 erning panel for an appeal under this section shall be com-
3 posed of—

4 (1) 2 individuals—

5 (A) 1 of whom is a representative from the
6 Agency;

7 (B) 1 of whom is a representative of the
8 Federal banking agency which received the re-
9 quest to which the appeal relates; and

10 (C) neither of whom—

11 (i) have participated in the material
12 supervisory determinations under appeal;
13 and

14 (ii) report directly or indirectly to the
15 individual who made the supervisory deter-
16 minations under appeal; and

17 (2) 1 individual who is a representative from—

18 (A) the Federal banking agency that heads
19 the Financial Institution Examination Council;
20 or

21 (B) if the Financial Institutions Examina-
22 tion Council is headed by a Federal banking
23 agency that is a party to the appeal, the Fed-
24 eral banking agency that is next scheduled to

1 head the Financial Institutions Examination
2 Council.

3 (f) CONDUCT OF APPEAL.—

4 (1) CONTENT OF FILING APPEAL.—The insured
5 depository institution, credit union, or other covered
6 person which institutes an appeal under subsection
7 (d)(1) shall include in the filing of such appeal all
8 the facts and legal arguments pertaining to the mat-
9 ter appealed.

10 (2) APPEARANCE.—The insured depository in-
11 stitution, credit union, or other covered person which
12 institutes an appeal under this section may appear
13 before the governing panel in person or by telephone,
14 through counsel, employees, or representatives of, or
15 for, such institution, credit union, or other covered
16 person.

17 (3) REQUESTS FOR ADDITIONAL INFORMA-
18 TION.—Any governing panel convened under this
19 section may request the insured depository institu-
20 tion, credit union, or other covered person, the
21 Agency, or the Federal banking agency to produce
22 additional information relevant to the appeal.

23 (4) FINAL WRITTEN DETERMINATIONS.—Any
24 governing panel convened under this section, by a
25 majority vote of the members of the panel, shall pro-

1 vide a final determination, in writing, within 30 days
2 of the filing of an informationally complete appeal,
3 or such longer period as the panel and the insured
4 depository institution, credit union, or other covered
5 person may jointly agree.

6 (5) PUBLIC INFORMATION.—A redacted copy of
7 any determination by a governing panel convened
8 under this section shall be made public upon the
9 issuance of such determination.

10 (g) PROHIBITION AGAINST RETALIATION.—The Di-
11 rector and the Federal banking agencies shall prescribe
12 regulations to provide safeguards from retaliation against
13 any insured depository institution, credit union, or other
14 covered person which institutes an appeal under this sec-
15 tion, as well as against any officer or and employee of any
16 such institution, credit union, or other person.

17 (h) MATERIAL SUPERVISORY DETERMINATION DE-
18 FINED.—For purposes of this section, the term “material
19 supervisory determination”—

20 (1) includes any action relating to any super-
21 vision or examinations; and

22 (2) does not include—

23 (A) a determination by any Federal bank-
24 ing agency to appoint a conservator or receiver
25 for an insured depository institution or a liqui-

1 dating agent for an insured credit union, as the
2 case may be, or a decision to take action pursu-
3 ant to section 38 of the Federal Deposit Insur-
4 ance Act or section 212 of the Federal Credit
5 Union Act, as the case may be; or

6 (B) any regulation or guidance, or order of
7 general applicability.

8 **SEC. 4205. LIMITATIONS ON AUTHORITY OF AGENCY AND**
9 **DIRECTOR.**

10 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
11 SELLERS OF NONFINANCIAL SERVICES.—

12 (1) IN GENERAL.—Notwithstanding any provi-
13 sion of this title (other than paragraph (4)) and sub-
14 ject to paragraph (2), the Director and the Agency
15 may not exercise any rulemaking, supervisory, en-
16 forcement or other authority, including authority to
17 order assessments, under this title with respect to—

18 (A) credit extended directly by a merchant,
19 retailer, or seller of nonfinancial goods or serv-
20 ices to a consumer, in a case in which the good
21 or service being provided is not itself a con-
22 sumer financial product or service, exclusively
23 for the purpose of enabling that consumer to
24 purchase such goods or services directly from

1 the merchant, retailer, or seller of nonfinancial
2 services; or

3 (B) collection of debt, directly by the mer-
4 chant, retailer, or seller of nonfinancial services,
5 arising from such credit extended.

6 In the application of this paragraph, the extension
7 of credit and the collection of debt described in sub-
8 paragraphs (A) and (B), respectively, shall not be
9 considered a consumer financial product or service.

10 (2) EXCEPTION FOR EXISTING AUTHORITY.—

11 The Director may exercise any rulemaking authority
12 regarding an extension of credit described in para-
13 graph (1)(A) or the collection of debt arising from
14 such extension, as may be authorized by the enumer-
15 ated consumer laws or any law or authority trans-
16 ferred under subtitle F or H.

17 (3) RULE OF CONSTRUCTION.—No provision of
18 this title shall be construed as modifying, limiting,
19 or superseding the authority of the Federal Trade
20 Commission or any agency other than the Agency
21 with respect to credit extended, or the collection of
22 debt arising from such extension, directly by a mer-
23 chant or retailer to a consumer exclusively for the
24 purpose of enabling that consumer to purchase

1 goods or services directly from the merchant or re-
2 tailer.

3 (4) EXCLUSION NOT APPLICABLE TO CERTAIN
4 CREDIT TRANSACTIONS.—Paragraph (1) shall not
5 apply to—

6 (A) any credit transaction, including the
7 collection of the debt arising from such exten-
8 sion, in which the merchant, retailer, or seller
9 of nonfinancial services assigns, sells, or other-
10 wise conveys such debt owed by the consumer
11 to another person;

12 (B) any credit transaction—

13 (i) in which the credit provided sig-
14 nificantly exceeds the market value of the
15 product or service provided; and

16 (ii) with respect to which the Director
17 finds that the sale of the product or service
18 is done as a subterfuge so as to evade or
19 circumvent the provisions of this title; or

20 (C) any credit transaction involving a per-
21 son who operates a line of business that in-
22 volves the extension of retail credit or retail
23 leases involving motor vehicles, if—

1 (i) the extension of retail credit or re-
2 tail leases is provided directly to con-
3 sumers; and

4 (ii) the contracts governing such ex-
5 tension of retail credit or retail leases are
6 not assigned to a third party finance or
7 leasing source, except on a de minimis
8 basis.

9 (b) EXCLUSION FOR PERSONS REGULATED BY THE
10 SECURITIES AND EXCHANGE COMMISSION.—

11 (1) IN GENERAL.—No provision of this title
12 shall be construed as altering, amending, or affect-
13 ing the authority of the Securities and Exchange
14 Commission or any securities commission (or any
15 agency or office performing like functions) of any
16 State to adopt rules, initiate enforcement pro-
17 ceedings, or take any other action with respect to a
18 person regulated by the Securities and Exchange
19 Commission or any securities commission (or any
20 agency or office performing like functions) of any
21 State. The Director and Agency shall have no rule-
22 making, supervisory, enforcement or other authority,
23 including the authority to order assessments, under
24 this title with respect to a person regulated by the
25 Securities and Exchange Commission or any securi-

1 ties commission (or any agency or office performing
2 like functions) of any State.

3 (2) CONSULTATION AND COORDINATION.—Not-
4 withstanding paragraph (1), the Securities and Ex-
5 change Commission shall consult and coordinate
6 with the Director with respect to any rule (including
7 any advance notice of proposed rulemaking) regard-
8 ing an investment product or service that is the
9 same type of product as, or that competes directly
10 with, a consumer financial product or service that is
11 subject to the jurisdiction of the Agency under this
12 title or under any other law.

13 (c) EXCLUSION FOR PERSONS REGULATED BY THE
14 COMMODITY FUTURES TRADING COMMISSION.—

15 (1) IN GENERAL.—No provision of this title
16 shall be construed as altering, amending, or affect-
17 ing the authority of the Commodity Futures Trading
18 Commission to adopt rules, initiate enforcement pro-
19 ceedings, or take any other action with respect to a
20 person regulated by the Commodity Futures Trading
21 Commission. The Director and the Agency shall
22 have no authority to exercise any power to enforce
23 this title with respect to a person regulated by the
24 Commodity Futures Trading Commission.

1 (2) CONSULTATION AND COORDINATION.—Not-
2 withstanding paragraph (1), the Commodity Futures
3 Trading Commission shall consult and coordinate
4 with the Director with respect to any rule (including
5 any advance notice of proposed rulemaking) regard-
6 ing a product or service that is the same type of
7 product as, or that competes directly with, a con-
8 sumer financial product or service that is subject to
9 the jurisdiction of the Agency under this title or
10 under any other law.

11 (d) PERSONS REGULATED BY A STATE SECURITIES
12 COMMISSION.—

13 (1) IN GENERAL.—No provision of this title
14 shall be construed as altering, amending, or affect-
15 ing the authority of any securities commission (or
16 any agency or office performing like functions) of
17 any State to adopt rules, initiate enforcement pro-
18 ceedings, or take any other action with respect to a
19 person regulated by any securities commission (or
20 any agency or office performing like functions) of
21 any State. Except as permitted in paragraph (2) and
22 subsection (m), the Director and the Agency shall
23 have no authority to exercise any power to enforce
24 this title with respect to a person regulated by any
25 securities commission (or any agency or office per-

1 forming like functions) of any State, but only to the
2 extent that the person acts in such regulated capac-
3 ity.

4 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
5 (1) shall not apply to any person to the extent such
6 person is engaged in any financial activity described
7 in any subparagraph of section 101(19) or is other-
8 wise subject to any enumerated consumer law or any
9 law or authority transferred under subtitle F or H.

10 (e) EXCLUSION FOR PERSONS REGULATED BY A
11 STATE INSURANCE REGULATOR.—

12 (1) IN GENERAL.—No provision of this title
13 shall be construed as altering, amending, or affect-
14 ing the authority of any State insurance regulator to
15 adopt rules, initiate enforcement proceedings, or
16 take any other action with respect to a person regu-
17 lated by any State insurance regulator. Except as
18 provided in paragraphs (2) and (3), the Agency shall
19 have no authority to exercise any power to enforce
20 this title with respect to a person regulated by any
21 State insurance regulator.

22 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
23 (1) shall not apply to any person described in such
24 paragraph to the extent such person is engaged in
25 any financial activity described in any subparagraph

1 of section 4002(19) or is otherwise subject to any of
2 the enumerated consumer laws or the authorities
3 transferred under subtitle F or H.

4 (3) PRESERVATION OF CERTAIN AUTHORI-
5 TIES.—No provision of this title shall be construed
6 as limiting the authority of the Director and the
7 Agency from exercising powers under this Act with
8 respect to a person, other than a person regulated
9 by a State insurance regulator, who provides a prod-
10 uct or service for or on behalf of a person regulated
11 by a State insurance regulator in connection with a
12 financial activity.

13 (f) EXCLUSION FOR PERSONS REGULATED BY THE
14 FEDERAL HOUSING FINANCE AGENCY.—No provision of
15 this title shall be construed as altering, amending, or af-
16 fecting the authority of the Federal Housing Finance
17 Agency to adopt rules, initiate enforcement proceedings,
18 or take any other action with respect to a person regulated
19 by the Federal Housing Finance Agency. The Director
20 and Agency shall have no authority to exercise any power
21 to enforce this title with respect to a person regulated by
22 the Federal Housing Finance Agency. For purposes of
23 this subsection, the term “person regulated by the Federal
24 Housing Finance Agency” means any Federal home loan

1 bank, and any joint office of 1 or more Federal home loan
2 banks.

3 (g) EXCLUSION FOR PERSONS REGULATED BY THE
4 FARM CREDIT ADMINISTRATION.—No provision of this
5 title shall be constructed as altering, amending, or affect-
6 ing the authority of the Farm Credit Administration to
7 adopt rules, institute enforcement proceedings, or take any
8 other action with respect to a person regulated by the
9 Farm Credit Administration. The Director and Agency
10 shall have no authority to exercise any power to enforce
11 this title, compel registration, or to order assessments with
12 respect to a person regulated by the Farm Credit Adminis-
13 tration. For purposes of this subsection, the term “person
14 regulated by the Farm Credit Administration” means any
15 Farm Credit System Institution.

16 (h) EMPLOYEE BENEFIT AND COMPENSATION PLANS
17 AND CERTAIN OTHER ARRANGEMENTS UNDER THE IN-
18 TERNAL REVENUE CODE OF 1986.—

19 (1) AUTHORITY RETAINED BY OTHER AGEN-
20 CIES.—No provision of this title shall be construed
21 as altering, amending, or affecting the authority of
22 the Secretary of the Treasury, the Secretary of
23 Labor, or the Commissioner of Internal Revenue to
24 adopt regulations, initiate enforcement proceedings,

1 or take any actions with respect to any specified
2 plan or arrangement.

3 (2) ACTIVITIES NOT CONSTITUTING FINANCIAL
4 ACTIVITIES.—For the purposes of this title, a person
5 shall not be treated as having engaged in a financial
6 activity, as defined in section 4002(19), solely be-
7 cause such person is a specified plan or arrangement
8 or is engaged in the activity of establishing or main-
9 taining, for the benefit of employees of such person
10 (or for members of an employee organization), any
11 specified plan or arrangement.

12 (3) REGULATORY COORDINATION.—In the case
13 of regulations promulgated under this title that ad-
14 dress any financial activity specifically pertaining to
15 the administration and maintenance of a specified
16 plan or arrangement, the Director shall coordinate
17 with the Secretary of Labor and the Secretary of
18 Treasury, as appropriate.

19 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
20 purposes of this subsection, the term “specified plan
21 or arrangement” means any plan, account, or ar-
22 rangement described in section 220, 223, 401(a),
23 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
24 nal Revenue Code of 1986, or any employee benefit
25 or compensation plan or arrangement, including a

1 plan that is subject to title I of the Employee Retirement
2 Income Security Act of 1974.

3 (i) EXCLUSION FOR ACCOUNTANTS AND TAX PRE-
4 PARERS.—

5 (1) IN GENERAL.—Except as permitted in para-
6 graph (2), the Director and the Agency may not ex-
7 ercise any rulemaking, supervisory, enforcement or
8 other authority, including authority to order assess-
9 ments, over—

10 (A) any person that is a certified public ac-
11 countant, permitted to practice as a certified
12 public accounting firm, or certified or licensed
13 for such purpose by a State, or any individual
14 who is employed by or holds an ownership inter-
15 est with respect to a person described in this
16 subparagraph when such person is performing
17 or offering to perform customary and usual ac-
18 counting activities, including the provision of
19 accounting, tax, advisory, other services that
20 are subject to the regulatory authority of a
21 state board of accountancy or a Federal author-
22 ity, or other services that are incidental to such
23 customary and usual accounting activities, to
24 the extent that such incidental services are not
25 offered or provided by the person separate and

1 apart from such customary and usual account-
2 ing activities and are not offered or provided to
3 consumers who are not receiving such cus-
4 tomary and usual accounting activities; or

5 (B) any person other than a person de-
6 scribed in subparagraph (A) that performs in-
7 come tax preparation activities for consumers.

8 (2) CERTAIN ACTIVITIES NOT EXCLUDED.—

9 (A) IN GENERAL.—In no event shall para-
10 graph (1) apply to any activity which involves
11 the sale of securities or extension of credit
12 which is provided by a person described in para-
13 graph (1)(A).

14 (B) DEFINITION.—For purposes of sub-
15 paragraph (A), the term “extension of credit”
16 shall not include an ordinary account receivable.

17 (3) DESCRIPTION OF ACTIVITIES.—Paragraph
18 (1) shall not apply to—

19 (A) any person described in paragraph
20 (1)(A) to the extent such person is engaged in
21 any activity which is not a customary and usual
22 accounting activity described in paragraph
23 (1)(A) or incidental thereto but which is a fi-
24 nancial activity described in any subparagraph
25 of section 4002(19);

1 (B) any person described in paragraph
2 (1)(B) to the extent such person is engaged in
3 any activity which is a financial activity de-
4 scribed in any subparagraph of section
5 4002(19); or

6 (C) any person described in paragraph
7 (1)(A) or (1)(B) that is otherwise subject to
8 any of the enumerated consumer laws or the
9 authorities transferred under subtitle F or H.

10 (j) EXCLUSION FOR REAL ESTATE LICENSEES.—

11 (1) IN GENERAL.—Except as permitted in para-
12 graph (2), the Director and the Agency may not ex-
13 ercise any rulemaking, supervisory, enforcement or
14 other authority, including authority to order assess-
15 ments, over a person that is licensed or registered as
16 a real estate broker, real estate agent, in accordance
17 with State law, but only to the extent that such per-
18 son—

19 (A) acts as a real estate agent or broker
20 for a buyer, seller, lessor, or lessee of real prop-
21 erty;

22 (B) brings together parties interested in
23 the sale, purchase, lease, rental, or exchange of
24 real property;

1 (C) negotiates, on behalf of any party, any
2 portion of a contract relating to the sale, pur-
3 chase, lease, rental, or exchange of real prop-
4 erty (other than in connection with providing fi-
5 nancing with respect to any such transaction);

6 (D) engages in any activity for which a
7 person engaged in the activity is required to be
8 registered or licensed as a real estate agent or
9 real estate broker under any applicable law; or

10 (E) offers to engage in any activity, or act
11 in any capacity, described in subparagraph (A),
12 (B), (C), or (D).

13 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
14 (1) shall not apply to any person described in such
15 paragraph to the extent such person is engaged in
16 any financial activity described in any subparagraph
17 of section 4002(19) or is otherwise subject to any of
18 the enumerated consumer laws or the authorities
19 transferred under subtitle F or H.

20 (k) EXCLUSION FOR AUTO DEALERS.—

21 (1) IN GENERAL.—The Director and the Agen-
22 cy may not exercise any rulemaking, supervisory, en-
23 forcement or any other authority, including author-
24 ity to order assessments, over a motor vehicle dealer
25 that is primarily engaged in the sale and servicing

1 of motor vehicles, the leasing and servicing of motor
2 vehicles, or both.

3 (2) CERTAIN FUNCTIONS EXCEPTED.—The pro-
4 visions of paragraph (1) shall not apply to any per-
5 son to the extent that person—

6 (A) provides consumers with any services
7 related to residential mortgages; or

8 (B) operates a line of business that in-
9 volves the extension of retail credit or retail
10 leases involving motor vehicles, and in which—

11 (i) the extension of retail credit or re-
12 tail leases is routinely provided directly to
13 consumers; and

14 (ii) the contract governing such exten-
15 sion of retail credit or retail leases is not
16 routinely assigned to a third party finance
17 or leasing source.

18 (3) NO IMPACT ON PRIOR AUTHORITY.—Noth-
19 ing in this subsection shall be construed to modify,
20 limit, or supersede the rulemaking or enforcement
21 authority over motor vehicle dealers that could be
22 exercised by any Federal department or agency on
23 the day prior to the enactment of this title.

24 (4) NO TRANSFER OF CERTAIN AUTHORITY.—
25 Notwithstanding subtitle F or any other provision of

1 law under this title, the consumer financial protec-
2 tion functions of the Board of Governors and the
3 Federal Trade Commission shall not be transferred
4 to the Director or the Agency to the extent such
5 functions are with respect to a person described
6 under paragraph (1).

7 (5) DEFINITIONS.—For purposes of this sub-
8 section:

9 (A) MOTOR VEHICLE.—The term “motor
10 vehicle” means any self-propelled vehicle de-
11 signed for transporting persons or property on
12 a street, highway, or other road.

13 (B) MOTOR VEHICLE DEALER.—The term
14 “motor vehicle dealer” means any person resi-
15 dent in the United States or any territory of
16 the United States, and licensed by a State, a
17 territory of the United States, or the District of
18 Columbia to engage in the sale of motor vehi-
19 cles.

20 (I) NO AUTHORITY TO IMPOSE USURY LIMIT.—No
21 provision of this title shall be construed as conferring au-
22 thority on the Director or the Agency to establish a usury
23 limit applicable to an extension of credit offered or made
24 by a covered person to a consumer, unless explicitly au-
25 thorized by law.

1 (m) EXCLUSION FOR MANUFACTURED HOME RE-
2 TAILERS AND MODULAR HOME RETAILERS.—

3 (1) IN GENERAL.—The Director and the Agen-
4 cy may not exercise any rulemaking, supervisory, en-
5 forcement or other authority, including authority to
6 order assessments, over a person to the extent such
7 person—

8 (A) acts as an agent or broker for a buyer
9 or seller of a manufactured home or a modular
10 home;

11 (B) facilitates the purchase by a consumer
12 of a manufactured home or modular home, by
13 negotiating the purchase price or terms of the
14 sales contract (other than providing financing
15 with respect to such transaction); or

16 (C) offers to engage in any activity de-
17 scribed in subparagraph (A) or (B).

18 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
19 (1) shall not apply to any person described in such
20 paragraph to the extent such person is engaged in
21 any financial activity described in any subparagraph
22 of section 4002(19) or is otherwise subject to any of
23 the enumerated consumer laws or the authorities
24 transferred under subtitle F or H.

1 (3) DEFINITIONS.—For purposes of this sub-
2 section:

3 (A) MANUFACTURED HOME.—The term
4 “manufactured home” has the meaning given
5 such term in section 603 of the National Manu-
6 factured Housing Construction and Safety
7 Standards Act of 1974 (42 U.S.C. 5402).

8 (B) MODULAR HOME.—The term “mod-
9 ular home” means a house built in a factory in
10 two or more modules that meet the State or
11 local building codes where the house will be lo-
12 cated and where such modules are transported
13 to the building site, installed on foundations,
14 and completed.

15 (n) EXCLUSION FOR PRACTICE OF LAW.—

16 (1) IN GENERAL.—Except as provided under
17 paragraph (2), nothing in this title shall apply with
18 respect to an activity engaged in by an attorney, or
19 engaged in under the direction of an attorney, as
20 part of the practice of law under the laws of a State
21 in which the attorney is licensed to practice law.

22 (2) RULE OF CONSTRUCTION.—

23 (A) IN GENERAL.—Paragraph (1) shall not
24 be construed to limit the exercise by the Direc-
25 tor and the Agency of any rulemaking, super-

visory, enforcement, or other authority, including authority to order assessments, regarding any activity that is a financial activity described in any subparagraph of section 4002(19) and is not engaged in as—

(i) part of the practice of law; or

(ii) incidental to the practice of law, to the extent that such activity is provided exclusively within the scope of the attorney-client relationship and is not otherwise provided by or under the direction of the attorney to any consumer who is not receiving legal advice or services from the attorney in connection with such activity.

(B) CONSTRUCTION.—Paragraph (1) shall not be construed to limit the authority of the Director and the Agency with respect to any activity to the extent that such activity is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(3) EXCEPTION.—Notwithstanding paragraph (1), an individual who provides legal advice or services related to preventing a foreclosure shall be sub-

1 ject to this title unless such individual provides fore-
2 closure prevention services in connection with—

3 (A) the preparation and filing of a bank-
4 ruptcy petition; or

5 (B) court proceedings to avoid a fore-
6 closure.

7 (o) EXCLUSION FOR PAWNBROKERS.—

8 (1) IN GENERAL.—The Director and the Agen-
9 cy may not exercise any rulemaking, supervisory, en-
10 forcement, or other authority, including authority to
11 order assessments, under this title with respect to
12 any pawnbroker licensed by a State or political sub-
13 division thereof, a territory of the United States, or
14 the District of Columbia, but only to the extent that
15 such person acts in such capacity and provides ei-
16 ther—

17 (A) non-recourse credit secured by a
18 possessory security interest in tangible goods
19 physically delivered by the consumer to the
20 pawnbroker for which the consumer does not
21 provide a written or electronic promise, order or
22 authorization to pay, or in any other manner
23 authorize a debit of a deposit account, prior to
24 or contemporaneously with the disbursement of
25 the original proceeds; or

1 (B) credit or any other financial activity
2 issued directly by a pawnbroker to a consumer,
3 in a case in which the good or service being
4 provided is not itself a consumer financial prod-
5 uct or service, exclusively for the purpose of en-
6 abling that consumer to purchase goods or serv-
7 ices directly from the pawnbroker.

8 (2) RULE OF CONSTRUCTION.—

9 (A) FTC AUTHORITY PRESERVED.—Ex-
10 cept as provided in subparagraph (B), no provi-
11 sion of this title shall be construed as modi-
12 fying, limiting, or superseding the authority of
13 the Federal Trade Commission with respect to
14 the activities described under paragraph (1).

15 (B) EXERCISE OF RULEMAKING AUTHOR-
16 ITY.—The Director may exercise any rule-
17 making authority regarding the activities de-
18 scribed in paragraph (1) only as may be author-
19 ized by the enumerated consumer laws or any
20 law or authority transferred under subtitle F or
21 H.

22 (p) EXCLUSION FOR CERTAIN CONSUMER REPORT-
23 ING AGENCIES.—

24 (1) IN GENERAL.—Except as permitted in para-
25 graph (2), the Director and the Agency may not ex-

1 exercise any rulemaking, supervisory, enforcement or
2 other authority, including authority to order assess-
3 ments, over a person that is a consumer reporting
4 agency, as such term is defined in section 603(f) of
5 the Fair Credit Reporting Act (15 U.S.C. 1681a(f)),
6 but only to the extent that such consumer reporting
7 agency furnishes a consumer report to another per-
8 son that it has reason to believe intends to use the
9 information for employment purposes, including for
10 security investigations, government licensing and
11 evaluating a consumer's residential or tenant his-
12 tory.

13 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
14 (1) shall not apply to any person described in such
15 paragraph to the extent such person is engaged in
16 any financial activity described in any subparagraph
17 of section 4002(19) or is otherwise subject to any of
18 the enumerated consumer laws or the authorities
19 transferred under subtitle F or H.

20 (q) LIMITED AUTHORITY OF THE AGENCY TO OB-
21 TAIN INFORMATION.—Notwithstanding subsections (a),
22 (f), (g), (h), (i), and (k), the Director may request or re-
23 quire information from any person subject to or described
24 in any such subsection in order to carry out the respon-

1 sibilities and functions of the Agency and in accordance
2 with section 4206, 4501, or 4502.

3 (r) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-
4 ITABLE CONTRIBUTIONS.—

5 (1) The Director and the Agency may not exer-
6 cise any rulemaking, supervisory, enforcement, or
7 other authority, including authority to order assess-
8 ments or penalties, over any activities related to the
9 solicitation or making of voluntary contributions to
10 or through a tax-exempt organization as recognized
11 by the Internal Revenue Service, by any agent, vol-
12 unteer or representative of such organizations to the
13 extent the organization, agent, volunteer or rep-
14 resentative thereof is soliciting or providing advice,
15 information, education or instruction to donor(s) or
16 potential donor(s) relating to a contribution to or
17 through the organization.

18 (2) This exclusion shall not apply to other ac-
19 tivities not described in the paragraph above and are
20 financial activities as described in any subparagraph
21 of section 4002(19), or otherwise subject to any of
22 the enumerated consumer laws, or the authorities
23 transferred under subtitle F or H.

1 **SEC. 4206. COLLECTION OF INFORMATION; CONFIDEN-**
2 **TIALITY REGULATIONS.**

3 (a) COLLECTION OF INFORMATION.—

4 (1) IN GENERAL.—In conducting research on
5 the provision of consumer financial products or serv-
6 ices, the Director shall have the power to gather in-
7 formation from time to time regarding the organiza-
8 tion, business conduct, and practices of covered per-
9 sons or service providers.

10 (2) SPECIFIC AUTHORITY.—In order to gather
11 such information, the Director shall have the
12 power—

13 (A) to gather and compile information;

14 (B) to require persons to file with the
15 Agency, in such form and within such reason-
16 able period of time as the Director may pre-
17 scribe, by regulation or order, annual or special
18 reports, or answers in writing to specific ques-
19 tions, furnishing information the Director may
20 require; and

21 (C) to make public such information ob-
22 tained by it under this section as is in the pub-
23 lic interest in reports or otherwise in the man-
24 ner best suited for public information and use.

25 (b) CONFIDENTIALITY REGULATIONS.—The Director
26 shall prescribe regulations regarding the confidential

1 treatment of information obtained from persons in connec-
2 tion with the exercise of any authority of the Agency or
3 Director under this title and the enumerated consumer
4 laws and the authorities transferred under subtitles F and
5 H.

6 (c) PRIVACY CONSIDERATIONS.—In collecting infor-
7 mation from any person, publicly releasing information
8 held by the Agency, or requiring covered persons to pub-
9 licly report information, the Director and the Agency shall
10 take steps to ensure that proprietary, personal or con-
11 fidential consumer information that are protected from
12 public disclosure under section 552(b) or 552a of title 5,
13 United States Code, or any other provision of law are not
14 made public under this title.

15 **SEC. 4207. MONITORING; ASSESSMENTS OF SIGNIFICANT**
16 **REGULATIONS; REPORTS.**

17 (a) MONITORING.—

18 (1) IN GENERAL.—The Agency shall monitor
19 for risks to consumers in the provision of consumer
20 financial products or services, including develop-
21 ments in markets for such products or services.

22 (2) MEANS OF MONITORING.—Such monitoring
23 may be conducted by examinations of covered per-
24 sons or service providers, analysis of reports ob-
25 tained from covered persons or service providers, as-

1 assessment of consumer complaints, surveys and inter-
2 views of covered persons, service providers, and con-
3 sumers, and review of available databases.

4 (3) CONSIDERATIONS.—In allocating the re-
5 sources of the Agency to perform the monitoring re-
6 quired by this section, the Director may consider,
7 among other factors—

8 (A) likely risks and costs to consumers as-
9 sociated with buying or using a type of con-
10 sumer financial product or service;

11 (B) consumers' understanding of the risks
12 of a type of consumer financial product or serv-
13 ice;

14 (C) the state of the law that applies to the
15 provision of a consumer financial product or
16 service, including the extent to which the law is
17 likely to adequately protect consumers;

18 (D) rates of growth in the provision of a
19 consumer financial product or service;

20 (E) extent, if any, to which the risks of a
21 consumer financial product or service may dis-
22 proportionately affect traditionally underserved
23 consumers, if any; or

1 (F) types, number, and other pertinent
2 characteristics of covered persons that provide
3 the product or service.

4 (4) REPORTS.—The Agency shall publish at
5 least 1 report of significant findings of the moni-
6 toring required by paragraph (1) in each calendar
7 year, beginning in the calendar year that is 1 year
8 after the designated transfer date.

9 (b) ASSESSMENT OF SIGNIFICANT REGULATIONS.—

10 (1) IN GENERAL.—The Agency shall conduct an
11 assessment of each significant regulation prescribed
12 or order issued by the Director under this title,
13 under the authorities transferred under subtitles F
14 and H or pursuant to any enumerated consumer law
15 that addresses, among other relevant factors, the ef-
16 fectiveness of the regulation in meeting the purposes
17 and objectives of this title and the specific goals
18 stated by the Director.

19 (2) BASIS FOR ASSESSMENT.—The assessment
20 shall reflect available evidence and any data that the
21 Agency reasonably may collect.

22 (3) REPORTS.—The Agency shall publish a re-
23 port of an assessment under this subsection not
24 later than 3 years after the effective date of the reg-
25 ulation or order, unless the Director determines that

1 3 years is not sufficient time to study or review the
2 impact of the regulation, but in no event shall the
3 Agency publish a report of such assessment more
4 than 5 years after the effective date of the regula-
5 tion or order.

6 (4) PUBLIC COMMENT REQUIRED.—Before pub-
7 lishing a report of its assessment, the Agency shall
8 invite, with sufficient time allotted, public comment
9 on, and may hold public hearings on, recommenda-
10 tions for modifying, expanding, or eliminating the
11 newly adopted significant regulation or order.

12 (c) INFORMATION GATHERING.—In conducting any
13 monitoring or assessment required by this section, the
14 Agency may gather information through a variety of meth-
15 ods, including by conducting surveys or interviews of con-
16 sumers.

17 **SEC. 4208. AUTHORITY TO RESTRICT MANDATORY**
18 **PREDISPUTE ARBITRATION.**

19 (a) IN GENERAL.—The Director, by regulation, may
20 prohibit or impose conditions or limitations on the use of
21 any agreement between a covered person and a consumer
22 for a consumer financial product or service providing for
23 arbitration of any future dispute between the parties if
24 the Director finds that such a prohibition or imposition
25 of conditions or limitations are in the public interest and

1 for the protection of consumers. This authority shall not
2 prohibit or restrict a consumer from entering into a vol-
3 untary arbitration agreement with a covered person after
4 a dispute has arisen.

5 (b) EFFECTIVE DATE.—Notwithstanding any other
6 provision of law, any regulation prescribed by the Director
7 under subsection (a) shall apply, consistent with the terms
8 of the regulation, to any agreement between a consumer
9 and a covered person entered into after the end of the
10 180-day period beginning on the effective date of the regu-
11 lation, as established by the Director.

12 **SEC. 4209. REGISTRATION AND SUPERVISION OF NON-**
13 **DEPOSITORY COVERED PERSONS.**

14 (a) RISK-BASED PROGRAMS.—

15 (1) IN GENERAL.—The Agency shall develop
16 risk-based programs to supervise covered persons
17 that are not credit unions, depository institutions, or
18 persons excluded under section 4205 by prescribing
19 registration requirements, reporting requirements,
20 and examination standards and procedures.

21 (2) BASIS FOR PROGRAMS.—The risk-based su-
22 pervisory programs established pursuant to para-
23 graph (1) shall be based on—

1 (A) relevant registration and reporting in-
2 formation about such covered persons, as deter-
3 mined by the Agency; and

4 (B) the Agency's assessment of risks posed
5 to consumers in the relevant geographic mar-
6 kets and markets for consumer financial prod-
7 ucts and services.

8 (b) REGISTRATION.—

9 (1) IN GENERAL.—The Director shall prescribe
10 regulations regarding registration requirements for
11 covered persons that are not credit unions or deposi-
12 tory institutions.

13 (2) CONSULTATION WITH STATE AGENCIES.—
14 In developing and implementing registration require-
15 ments under this subsection, the Agency shall con-
16 sult with State agencies regarding requirements or
17 systems for registration (including coordinated or
18 combined systems), where appropriate.

19 (3) EXCEPTION FOR RELATED PERSONS.—The
20 Agency shall not impose requirements regarding the
21 registration of a related person.

22 (4) REGISTRATION INFORMATION.—Subject to
23 regulations prescribed by the Director, the Agency
24 shall publicly disclose the registration information
25 about a covered person which is not a bank holding

1 company, credit union, or depository institution for
2 the purposes of facilitating the ability of consumers
3 to identify the covered person as registered with the
4 Agency.

5 (c) REPORTING REQUIREMENTS.—

6 (1) IN GENERAL.—The Agency may require re-
7 ports from covered persons that are not credit
8 unions or depository institutions, or service providers
9 thereto, for the purposes of facilitating supervision
10 of such covered persons or service providers.

11 (2) CONSISTENCY OF REPORTING REQUIRE-
12 MENTS AND RISK-BASED STANDARDS.—The Agency
13 shall impose reporting requirements under this sub-
14 section that are consistent with the risk-based stand-
15 ards developed and implemented under this section
16 and the registration information pertaining to the
17 relevant types or classes of covered persons.

18 (3) CONTENTS OF REPORTS.—Reporting re-
19 quirements imposed under this paragraph may in-
20 clude information regarding—

21 (A) the nature of the covered person's
22 business;

23 (B) the covered person's name, legal form,
24 ownership and management structure, and re-
25 lated persons;

1 (C) the covered person's locations of oper-
2 ation;

3 (D) the covered person's types and number
4 of consumer financial products and services
5 provided by the covered person;

6 (E) compliance with any requirement im-
7 posed or enforced by the Agency, including any
8 requirement relating to registration, licensing,
9 fees, or assessments; and

10 (F) the financial condition of such covered
11 person, including a related person, for the pur-
12 pose of assessing the ability of such person to
13 perform its obligation to consumers.

14 (4) CONSULTATION WITH THE FEDERAL TRADE
15 COMMISSION.—In developing and implementing re-
16 port requirements under this subsection, the Agency
17 shall consult with the Federal Trade Commission,
18 where appropriate.

19 (5) EXCEPTION FOR RELATED PERSONS.—
20 Other than reports permitted under paragraph
21 (3)(F) or in connection with a supervisory action or
22 examination or pursuant to the powers granted in
23 subtitle E, the Agency shall not impose requirements
24 regarding reports of any related person.

25 (d) EXAMINATIONS.—

1 (1) EXAMINATIONS REQUIRED.—The Agency
2 shall conduct examinations of covered persons that
3 are not credit unions or depository institutions as
4 part of the programs implemented under paragraphs
5 (2) and (3) of section 4202(c).

6 (2) EXAMINATION STANDARDS AND PROCE-
7 DURES.—The Director shall establish risk-based
8 standards and procedures for conducting examina-
9 tions of covered persons required to be examined
10 under paragraph (1), including the frequency and
11 scope of such examinations, except that the Agency
12 shall conduct examinations of such covered persons
13 that are determined to pose the highest risk to con-
14 sumers based on factors determined by the Director,
15 such as the operations, sales practices, or consumer
16 financial products or services provided by such cov-
17 ered persons.

18 (e) AUTHORITY TO COLLECT INFORMATION REGARD-
19 ING FEES OR ASSESSMENTS.—To the extent permitted by
20 Federal law, the Agency may obtain from the Secretary
21 of the Treasury information relating to a covered person
22 which is not a bank holding company, credit union, or de-
23 pository institution, including information regarding com-
24 pliance with a reporting or registration requirement under
25 the subchapter II of chapter 53 of title 31, United States

1 Code, for the purposes of, and only to the extent necessary
2 in, investigating, determining, or enforcing compliance
3 with a requirement relating to any fee or assessment im-
4 posed by the Agency under this title.

5 **SEC. 4210. EFFECTIVE DATE.**

6 This subtitle shall take effect on the designated
7 transfer date.

8 **Subtitle C—Specific Authorities**

9 **SEC. 4301. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE**
10 **ACTS OR PRACTICES.**

11 (a) IN GENERAL.—The Agency may take any action
12 authorized under subtitle E to prevent a person from com-
13 mitting or engaging in an unfair, deceptive, or abusive act
14 or practice under Federal law in connection with any
15 transaction with a consumer for a consumer financial
16 product or service, or the offering of a consumer financial
17 product or service.

18 (b) REGULATIONS.—

19 (1) IN GENERAL.—The Director may prescribe
20 regulations identifying as unlawful unfair, deceptive,
21 or abusive acts or practices in connection with any
22 transaction with a consumer for a consumer finan-
23 cial product or service or the offering of a consumer
24 financial product or service.

1 (2) INCLUDES PREVENTION MEASURES.—Regu-
2 lations prescribed under this section may include re-
3 quirements for the purpose of preventing such acts
4 or practices.

5 (c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR
6 PRACTICES DEFINED.—

7 (1) UNFAIR ACTS OR PRACTICES.—Any deter-
8 mination by the Director and the Agency that an act
9 or practice is unfair shall be consistent with the
10 standard set forth under section 5 of the Federal
11 Trade Commission Act and with the policy state-
12 ment adopted by the Federal Trade Commission
13 pursuant to section 5 of the Federal Trade Commis-
14 sion Act and dated December 17, 1980.

15 (2) DECEPTIVE ACTS OR PRACTICES.—Any de-
16 termination by the Director and the Agency that an
17 act or practice is deceptive shall be consistent with
18 the policy statement adopted by the Federal Trade
19 Commission pursuant to section 5 of the Federal
20 Trade Commission Act and dated October 14, 1983.

21 (3) ABUSIVE ACTS OR PRACTICES.—The Direc-
22 tor and the Agency may determine that an act or
23 practice is abusive only if the Director finds that—

24 (A) the act or practice is reasonably likely
25 to result in a consumer's inability to under-

1 stand the terms and conditions of a financial
2 product or service or to protect their own inter-
3 ests in selecting or using a financial product or
4 service; and

5 (B) the widespread use of the act or prac-
6 tice is reasonably likely to contribute to insta-
7 bility and greater risk in the financial system.

8 (4) CONSIDER AS UNFAIR CERTAIN PRACTICES
9 WITH REGARD TO THE PROVISION OF CREDIT
10 SCORES.—Subject to regulations prescribed by the
11 Director, it shall be considered unfair for any con-
12 sumer reporting agency that compiles and maintains
13 files on consumers on a nationwide basis (as defined
14 in section 603(p) of the Fair Credit Reporting Act;
15 15 U.S.C. 1681a(p)) to make available for purchase
16 by creditors any credit score for a consumer that is
17 not also available for purchase by that consumer at
18 the same price as other credit scores sold to con-
19 sumers by such agency.

20 (d) CONSULTATION.—In prescribing any regulation
21 under this section, the Director shall consult with the Fed-
22 eral banking agencies, State bank supervisors, the Federal
23 Trade Commission, or other Federal agencies, as appro-
24 priate, regarding the consistency of a proposed regulation
25 with prudential, consumer protection, civil rights, market,

1 or systemic objectives administered by such agencies or
2 supervisors.

3 **SEC. 4302. DISCLOSURES.**

4 (a) IN GENERAL.—The Director may prescribe regu-
5 lations to ensure the timely, appropriate and effective dis-
6 closure to consumers of the costs, benefits, and risks asso-
7 ciated with any consumer financial product or service.

8 (b) COORDINATION WITH OTHER LAWS.—In pre-
9 scribing regulations under subsection (a), the Director
10 shall take into account disclosure requirements under
11 other laws in order to enhance consumer compliance and
12 reduce regulatory burden.

13 (c) COMPLIANCE.—

14 (1) MODEL DISCLOSURES.—The Agency may
15 provide model disclosures to facilitate compliance
16 with the requirements of regulations prescribed
17 under this section.

18 (2) PER SE COMPLIANCE.—Compliance by a
19 covered person with the model disclosures issued by
20 the Agency under this subsection shall per se con-
21 stitute compliance with the disclosure requirements
22 of this section.

23 (3) ADDITIONAL GUIDANCE.—The Agency may
24 issue exemptions, no action letters, and other guid-

1 ance to promote compliance with disclosures require-
2 ments of regulations prescribed under this section.

3 (d) **COMBINED MORTGAGE LOAN DISCLOSURE.**—

4 Within 1 year after the designated transfer date, the Di-
5 rector shall propose for public comment regulations and
6 model disclosures that combine the disclosures required
7 under the Truth in Lending Act and the Real Estate Set-
8 tlement Procedures Act into a single, integrated disclosure
9 for mortgage loan transactions covered by those laws, un-
10 less the Director determines that any proposal issued by
11 the Board of Governors and the Department of Housing
12 and Urban Development carries out the same purpose.

13 **SEC. 4303. SALES PRACTICES.**

14 The Director may prescribe regulations and issue or-
15 ders and guidance regarding the manner, settings, and cir-
16 cumstances for the provision of any consumer financial
17 products or services to ensure that the risks, costs, and
18 benefits of the products or services, both initially and over
19 the term of the products or services, are fully and accu-
20 rately represented to consumers.

21 **SEC. 4304. PILOT DISCLOSURES.**

22 (a) **PILOT DISCLOSURES.**—The Agency shall estab-
23 lish standards and procedures for approval of pilot disclo-
24 sures to be provided or made available by a covered person
25 to consumers in connection with the provision of a con-

sumer financial product or service, or the offering of a consumer financial product or service.

(b) STANDARDS.—The procedures shall provide that a pilot disclosure must be limited in time and scope and reasonably designed to contribute materially to the understanding of consumer awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(c) TRANSPARENCY.—The procedures shall provide for public disclosure of pilots, but the Agency may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

**SEC. 4305. ADOPTING OPERATIONAL STANDARDS TO
DETER UNFAIR, DECEPTIVE, OR ABUSIVE
PRACTICES.**

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions or credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

1 (2) registration, licensing, or certification;

2 (3) bond or other appropriate financial require-
3 ments to provide reasonable assurance of ability to
4 perform its obligations to consumers;

5 (4) creating and maintaining records of trans-
6 actions or accounts; or

7 (5) procedures and operations relating to the
8 provision of, or maintenance of accounts for, con-
9 sumer financial products or services.

10 (b) AGENCY AUTHORITY TO PRESCRIBE STAND-
11 ARDS.—

12 (1) IN GENERAL.—The Director may prescribe
13 regulations establishing minimum standards under
14 this section for any class of covered persons other
15 than covered persons which are subject to the juris-
16 diction of a Federal banking agency or a State bank
17 supervisor, or for any service provider.

18 (2) REGISTRATION AND LICENSING STAND-
19 ARDS.—In addition to prescribing standards for the
20 purposes described in subsection (a), the Director
21 may prescribe registration or licensing standards ap-
22 plicable to covered persons for the purposes of im-
23 posing fees or assessments in accordance with this
24 title.

1 (3) ENFORCEMENT OF STANDARDS.—The Di-
2 rector may enforce under subtitle E compliance with
3 standards adopted by the Director or a State pursu-
4 ant to this section for covered persons or service
5 providers operating in that State.

6 (c) CONSULTATION.—In prescribing minimum stand-
7 ards under this section, the Director shall consult with the
8 Federal banking agencies, State bank supervisors, the
9 Federal Trade Commission, or other Federal agencies, as
10 appropriate, regarding the consistency of a proposed regu-
11 lation with prudential, consumer protection, civil rights,
12 market, or systemic objectives administered by such agen-
13 cies or supervisors.

14 **SEC. 4306. DUTIES.**

15 (a) IN GENERAL.—

16 (1) REGULATIONS ENSURING FAIR DEALING
17 WITH CONSUMERS.—The Director shall prescribe
18 regulations imposing duties on a covered person, or
19 an employee of a covered person, or an agent or
20 independent contractor for a covered person, who
21 deals or communicates directly with consumers in
22 the provision of a consumer financial product or
23 service, as the Director deems appropriate or nec-
24 essary to ensure fair dealing with consumers.

1 (2) CONSIDERATIONS FOR DUTIES.—In pre-
2 scribing such regulations, the Director shall consider
3 whether—

4 (A) the covered person, employee, agent, or
5 independent contractor represents implicitly or
6 explicitly that the person, employee, agent, or
7 contractor is acting in the interest of the con-
8 sumer with respect to any aspect of the trans-
9 action;

10 (B) the covered person, employee, agent,
11 or independent contractor provides the con-
12 sumer with advice with respect to any aspect of
13 the transaction;

14 (C) the consumer's reliance on or use of
15 any advice from the covered person, employee,
16 agent, or independent contractor would be rea-
17 sonable and justifiable under the circumstances;

18 (D) the benefits to consumers of imposing
19 a particular duty would outweigh the costs; and

20 (E) any other factors as the Director con-
21 siders appropriate.

22 (3) DUTIES RELATING TO COMPENSATION
23 PRACTICES.—

24 (A) IN GENERAL.—The Director may pre-
25 scribe regulations establishing duties regarding

1 compensation practices applicable to a covered
2 person, employee, agent, or independent con-
3 tractor who deals or communicates directly with
4 a consumer in the provision of a consumer fi-
5 nancial product or service for the purpose of
6 promoting fair dealing with consumers.

7 (B) NO COMPENSATION CAPS.—The Direc-
8 tor may not prescribe a limit on the total dollar
9 amount of compensation paid to any person.

10 (C) DISPARITY TREATMENT PROHIB-
11 ITED.—The Director may not prescribe regula-
12 tions that directly or indirectly disparately
13 treat, or are interpreted to disparately treat, or
14 disparately impact any entity that employs cov-
15 ered persons.

16 (4) REQUIREMENT TO INCLUDE DISCLAIMER ON
17 PUBLIC STATEMENTS.—The Director shall ensure
18 that the Agency’s website, and any statement made
19 by the Director or the Agency to the public, includes
20 a disclaimer stating that the Agency does not en-
21 dorse any particular financial product or service and
22 consumers are expected to exercise due diligence in
23 deciding what financial products and services are ap-
24 propriate for them.

25 (b) ADMINISTRATIVE PROCEEDINGS.—

1 (1) IN GENERAL.—Any regulation prescribed by
2 the Director under this section shall be enforceable
3 only by the Agency through an adjudication pro-
4 ceeding under subtitle E or by a State regulator
5 through an appropriate administrative proceeding as
6 permitted under State law.

7 (2) EXCLUSIVITY OF REMEDY.—No action may
8 be commenced in any court to enforce any require-
9 ment of a regulation prescribed under this section
10 (other than by the Agency, or by a State regulator,
11 as may be necessary to enforce an administrative
12 order under this section), and no court may exercise
13 supplemental jurisdiction over a claim asserted
14 under a regulation prescribed under this section
15 based on allegations or evidence of conduct that oth-
16 erwise may be subject to such regulation.

17 (3) RULE OF CONSTRUCTION.—The Agency,
18 the Attorney General, and any State attorney gen-
19 eral or State regulator shall not be precluded from
20 enforcing any other Federal or State law against a
21 person with respect to conduct that may be subject
22 to a regulation prescribed by the Director under this
23 section.

1 (c) EXCLUSIONS.—This section shall not be con-
2 strued as authorizing the Director to prescribe regulations
3 applicable to—

4 (1) an attorney licensed to practice law and in
5 compliance with the applicable rules and standards
6 of professional conduct, but only to the extent that
7 the consumer financial product or service provided is
8 within the attorney-client relationship with the con-
9 sumer; or

10 (2) any trustee, custodian, or other person that
11 holds a fiduciary duty in connection with a trust, in-
12 cluding a fiduciary duty to a grantor or beneficiary
13 of a trust, that is subject to and in compliance with
14 the applicable law relating to such trust.

15 **SEC. 4307. CONSUMER RIGHTS TO ACCESS INFORMATION.**

16 (a) IN GENERAL.—Subject to regulations prescribed
17 by the Director, a covered person shall make available to
18 a consumer, in an electronic form usable by the consumer,
19 information in the control or possession of the covered per-
20 son concerning the consumer financial product or service
21 that the consumer obtained from such covered person in-
22 cluding information relating to any transaction, series of
23 transactions, or to the account including costs, charges
24 and usage data.

1 (b) EXCEPTIONS.—A covered person shall not be re-
2 quired by this section to make available to the consumer—

3 (1) any confidential commercial information, in-
4 cluding an algorithm used to derive credit scores or
5 other risk scores or predictors;

6 (2) any information collected by the covered
7 person for the purpose of preventing fraud or money
8 laundering, or detecting, or making any report re-
9 garding other unlawful or potentially unlawful con-
10 duct;

11 (3) any information required to be kept con-
12 fidential by any other law (including section 6103 of
13 the Internal Revenue Code of 1986); or

14 (4) any information that the covered person
15 cannot retrieve in the ordinary course of its business
16 with respect to that information.

17 (c) NO DUTY TO MAINTAIN RECORDS.—No provision
18 of this section shall be construed as imposing any duty
19 on a covered person to maintain or keep any information
20 about a consumer.

21 (d) STANDARDIZED FORMATS FOR DATA.—The Di-
22 rector, by regulation, shall prescribe standards applicable
23 to covered persons to promote the development and use
24 of standardized formats for information, including

1 through the use of machine readable files, to be made
2 available to consumers under this section.

3 (e) CONSULTATION.—The Director shall, when pre-
4 scribing any regulation under this section, consult with the
5 Federal banking agencies, State bank supervisors, the
6 Federal Trade Commission, and the Commissioner of In-
7 ternal Revenue to ensure that the regulations—

8 (1) impose substantively similar requirements
9 on covered persons;

10 (2) take into account conditions under which
11 covered persons do business both in the United
12 States and in other countries; and

13 (3) do not require or promote the use of any
14 particular technology in order to develop systems for
15 compliance.

16 **SEC. 4308. PROHIBITED ACTS.**

17 It shall be unlawful for any person—

18 (1) to advertise, market, offer, sell, enforce, or
19 attempt to enforce, any term, agreement, change in
20 terms, fee, or charge in connection with a consumer
21 financial product or service that is not in conformity
22 with this title or applicable regulation prescribed or
23 order issued by the Director or to engage in any un-
24 fair, deceptive, or abusive act or practice, except that
25 no person shall be held to have violated this sub-

1 section solely by virtue of providing or selling time
2 or space to a person placing an advertisement;

3 (2) to fail or refuse to pay any fee or assess-
4 ment imposed by the Agency under this title, to fail
5 or refuse to permit access to or copying of records,
6 to fail or refuse to establish or maintain records, or
7 to fail or refuse to make reports or provide informa-
8 tion to the Agency, as required by this title, an enu-
9 merated consumer law, or pursuant to the authori-
10 ties transferred by subtitles F and H, or any regula-
11 tion prescribed or order issued by the Director this
12 title or pursuant to any such authority; or

13 (3) to knowingly or recklessly provide substan-
14 tial assistance to another person in violation of the
15 provisions of section 4301, or any regulation pre-
16 scribed or order issued under such section, and, not-
17 withstanding any other provision of this title, any
18 such person shall be deemed to be in violation of
19 that section to the same extent as the person to
20 whom such assistance is provided.

21

22 Nothing in this section shall be construed as limiting or
23 superseding the protection provided to any provider or
24 user qualifying for protection under section 230(c)(1) of
25 the Communications Act of 1934 (47 U.S.C. 230(c)(1)).

1 **SEC. 4309. TREATMENT OF REMITTANCE TRANSFERS.**

2 (a) DISCLOSURES REQUIRED FOR REMITTANCE
3 TRANSFERS.—

4 (1) IN GENERAL.—Each remittance transfer
5 provider shall make disclosures to consumers, as
6 specified by this section and by regulation prescribed
7 by the Director.

8 (2) SPECIFIC DISCLOSURES.—In addition to
9 any other disclosures applicable under this title, a
10 remittance transfer provider shall—

11 (A) disclose clearly and conspicuously, in
12 writing and in a form that the consumer may
13 keep, to each consumer who requests informa-
14 tion regarding the fees or exchange rate for a
15 remittance transfer, prior to the consumer mak-
16 ing any payment in connection with the trans-
17 fer—

18 (i) the total amount in United States
19 dollars that will be required to be paid by
20 the consumer in connection with the remit-
21 tance transfer;

22 (ii) the amount of currency that the
23 designated recipient of the remittance
24 transfer will receive, using the values of
25 the currency into which the funds will be
26 exchanged;

1 (iii) the fee charged by the remittance
2 transfer provider for the remittance trans-
3 fer;

4 (iv) any exchange rate to be used by
5 the remittance transfer provider for the re-
6 mittance transfer, unless the exchange rate
7 is not fixed on send;

8 (v) the amount of time for which the
9 information specified in this subparagraph
10 (A) will be in effect;

11 (vi) the expected time interval within
12 which the funds being transferred will be
13 made available to the recipient; and

14 (vii) the location where the funds
15 being transferred will be made available to
16 the recipient if the funds are to be made
17 available only at one location, or if the re-
18 mittance transfer provider permits the re-
19 cipient to choose from multiple locations
20 where the funds being transferred will be
21 made available to the recipient, the remit-
22 tance transfer provider shall make avail-
23 able to the consumer or the recipient a re-
24 source that lists such locations;

1 (B) at the time at which the consumer
2 makes payment in connection with the remit-
3 tance transfer, a receipt in writing disclosing
4 clearly and conspicuously—

5 (i) the information described in sub-
6 paragraph (A);

7 (ii) the expected time interval within
8 which the funds being transferred will be
9 made available to the recipient, which shall
10 be not more than ten days after the date
11 the consumer makes payment in connec-
12 tion with the remittance transfer unless
13 otherwise prohibited by applicable State or
14 Federal law or the law of another country,
15 or as may be specified by the consumer so
16 long as the consumer has the choice to
17 order that the funds be made available to
18 the recipient not more than ten days after
19 the consumer makes payment in connec-
20 tion with the remittance transfer;

21 (iii) the location where the funds
22 being transferred will be made available to
23 the recipient if the funds are to be made
24 available only at one location, or if the re-
25 mittance transfer provider permits the re-

1 ipient to choose from multiple locations
2 where the funds being transferred will be
3 made available to the recipient, the remit-
4 tance transfer provider shall make avail-
5 able to the consumer or the recipient a re-
6 source that lists such locations;

7 (iv) the name and telephone number
8 or address of the designated recipient, if
9 provided to the remittance transfer pro-
10 vider by the consumer;

11 (v) information about the rights of the
12 consumer under this section to cancel the
13 remittance transfer, to resolve errors and
14 to receive refunds;

15 (vi) appropriate contact information
16 for the remittance transfer provider;

17 (vii) a transaction reference number
18 unique to that remittance transfer; and

19 (viii) information as to when the ex-
20 change rate will be calculated (for example,
21 when the funds are received by the recipi-
22 ent), if the customer has been notified that
23 the exchange rate is not fixed on send;

24 (C) at the time at which the consumer ini-
25 tiates the remittance transfer, offer to provide

1 in writing, prior to making any payment in con-
2 nection with the transfer, the information listed
3 in subparagraph (A); and

4 (D) in the case of an exchange rate not
5 fixed on send, the remittance provider shall also
6 disclose, at the time at which the consumer ini-
7 tiates the remittance transfer, the range, using
8 the high and low rates, for the prior 30 day pe-
9 riod, that the consumer would have received if
10 a representative amount had been exchanged by
11 the remittance transfer provider, as well as a
12 clear and conspicuous notice that the actual ex-
13 change rate may vary.

14 If the actual rate used for the transfer is known to
15 the remittance provider, either because such rate
16 was set by the remittance provider itself or because
17 the remittance provider receives confirmation of the
18 actual exchange rate used, the remittance provider
19 shall make available to consumers written or elec-
20 tronic confirmation of the actual exchange rate used
21 and the amount of currency that the recipient or the
22 remittance transfer received, using the values of the
23 currency into which the funds were exchanged. The
24 Director shall within 2 years after the date of the
25 enactment of the Consumer Financial Protection

1 Agency Act of 2009 prescribe consumer disclosures
2 for transfers with rates not fixed on send that are
3 functionally equivalent to those applicable to remit-
4 tances where the exchange rate is specified by the
5 remittance transfer provider at the time the con-
6 sumer initiates the remittance transfer. To the
7 greatest extent possible, the Director shall ensure
8 that functional equivalence will enable remittance
9 transfer providers to comply with all requirements in
10 this title and provide consumers with information
11 sufficient to compare services providers, to time
12 their use of the product, to discover errors in trans-
13 mission and to seek remedies.

14 (3) EXEMPTION.—Notwithstanding require-
15 ments under paragraph (2)(A)(ii), (2)(A)(iv), or
16 (2)(B)(i), no such disclosure is required—

17 (A) because of the requirements of another
18 law, including the law of another country;

19 (B) because the transfer is being routed
20 through the Directo a México offered by the
21 Federal reserve banks; or

22 (C) because of any other circumstance
23 deemed permissible by regulation of the Direc-
24 tor; If the actual rate used for the transfer is
25 known to the remittance provider, the remit-

1 tance provider shall make available to con-
2 sumers written or electronic confirmation of the
3 actual exchange rate used and the amount of
4 currency that the recipient of the remittance
5 transfer received, using the values of the cur-
6 rency into which the funds were exchanged.

7 (4) PROVISION OF TOLL-FREE NUMBER AND
8 WEB ACCESS.—

9 (A) In addition to providing the disclosures
10 required by this section to a consumer at a re-
11 mittance transfer provider location, a remit-
12 tance transfer provider shall provide a toll-free
13 telephone number or local number, and an
14 Internet website that a consumer can access for
15 which access no remittance transfer provider
16 may assess a charge, to obtain the information
17 required by paragraph (2)(A) for remittance
18 transfers offered by that remittance transfer
19 provider or information about the status of a
20 remittance transfer for which a consumer has
21 made payment.

22 (B) A remittance transfer provider that on
23 an aggregate basis originates 30,000 or fewer
24 transfers on a calendar year basis (or such
25 other amount as may be prescribed by the Di-

1 rector) is not required to offer the web access
2 prescribed in subparagraph (A), but is required
3 to provide a toll-free telephone number or local
4 number as prescribed in subparagraph (A).

5 (5) ALTERNATIVE METHODS OF DISCLOSURE.—

6 Subject to subsection (e)(2), a remittance transfer
7 provider may—

8 (A) if the transaction is conducted entirely
9 by telephone (which shall include, but not be
10 limited to, a mobile telephone) satisfy the re-
11 quirements of paragraph (2)(A) orally or, at the
12 option of the consumer, electronically through a
13 message sent to the consumer through any elec-
14 tronic means (including, but not limited to, an
15 electronic mail address or a mobile telephone)
16 as designated by the consumer;

17 (B) satisfy the requirements of paragraph
18 (2)(A) electronically if the transfer is initiated
19 by the consumer electronically through the re-
20 mittance transfer provider's website or through
21 any other electronic means; and

22 (C) satisfy the requirements of paragraph
23 (2)(B) by mailing (or transmitting electronically
24 if the transfer is initiated electronically by the
25 consumer through the remittance transfer pro-

1 vider’s website or the consumer otherwise con-
2 sents in accordance with the provisions of sec-
3 tion 101 of the Electronic Signatures in Global
4 and National Commerce Act) the information
5 required under such paragraph to the consumer
6 not later than one business day after the date
7 on which the transaction is conducted, if the
8 transaction is conducted entirely by telephone
9 (or electronically) and the consumer requests a
10 written receipt.

11 (b) WRITTEN FOREIGN LANGUAGE DISCLOSURES.—

12 (1) IN GENERAL.—The disclosures required
13 under subsections (a)(2)(A) and (a)(2)(B)(i) shall be
14 made in English and—

15 (A) at each remittance transfer provider
16 location, shall be made in the same languages
17 principally used by the remittance transfer pro-
18 vider, or any of its agents, to advertise, solicit,
19 or market its remittance transfers business, ei-
20 ther orally or in writing, at that location, if
21 other than English, provided that such lan-
22 guages are those for which the Director has
23 issued model disclosures as provided in sub-
24 section (g); or

1 (B) on a remittance transfer provider's
2 website, shall at a minimum be made in any
3 other language for which the Director has
4 issued model disclosures as provided in sub-
5 section (g) if the remittance transfer provider,
6 or any of its agents, advertises, solicits, or mar-
7 kets its remittance transfers business in such
8 language.

9 (2) DISPUTES CONCERNING TERMS.—If a dis-
10 closure is required by this section to be in English
11 and another language, the English version of the
12 disclosure shall govern any dispute concerning the
13 terms of the receipt. However, any discrepancies be-
14 tween the English version and any other version due
15 to the translation of the receipt from English to an-
16 other language including errors or ambiguities shall
17 be construed against the remittance transfer pro-
18 vider or its agent and the remittance transfer pro-
19 vider or its agent shall be liable for any damages
20 caused by these discrepancies.

21 (c) REMITTANCE TRANSFER CANCELLATIONS, RE-
22 FUNDS, AND ERRORS.—

23 (1) CANCELLATIONS.—

1 (A) After receiving the receipt required
2 under subsection (a)(2)(B), a consumer may
3 cancel the currency transaction—

4 (i) before leaving the premises of the
5 remittance transfer provider where the
6 consumer received the receipt; and

7 (ii) not later than 30 minutes after
8 the time the consumer initiated the remit-
9 tance transfer with the remittance transfer
10 provider.

11 (B) If a consumer cancels the transaction,
12 the remittance transfer provider shall imme-
13 diately refund to the consumer the fees paid
14 and the currency to be transferred, and issue a
15 receipt indicating that the transaction has been
16 cancelled.

17 (C) A consumer may not cancel a remit-
18 tance transfer after the remittance transfer pro-
19 vider has sent the funds to the recipient.

20 (D) A remittance transfer provider shall
21 not be required to provide a refund if providing
22 a refund would violate State or Federal law.

23 (2) REFUNDS.—

24 (A) If a remittance transfer provider re-
25 ceives written notice from the consumer within

1 10 days of the promised date of delivery of a
2 remittance transfer that no amount of the
3 funds to be remitted was made available to the
4 designated recipient in the foreign country, the
5 remittance transfer provider shall—

6 (i) refund to the consumer the total
7 amount in U.S. dollars that was paid by
8 the consumer in connection with such re-
9 mittance transfer;

10 (ii) promptly transmit the remittance
11 transfer in accordance with the terms in
12 the written receipt provided to the con-
13 sumer pursuant to subsection (a)(2)(B);

14 (iii) provide such other remedy, as de-
15 termined appropriate by rule of the Direc-
16 tor for the protection of consumers; or

17 (iv) demonstrate to the consumer that
18 the proceeds of the remittance transfer
19 were made available to the recipient of the
20 remittance provider.

21 (B) A remittance transfer provider shall
22 not be required to provide a refund if providing
23 a refund would violate State or Federal law.

24 (3) ERROR RESOLUTION.—

1 (A) IN GENERAL.—If a remittance transfer
2 provider receives written notice from the con-
3 sumer within 60 days of the promised date of
4 delivery that an error occurred with respect to
5 a remittance transfer, including that the full
6 amount of the funds to be remitted was not
7 made available to the designated recipient in
8 the foreign country, the remittance transfer
9 provider shall resolve the error pursuant to this
10 paragraph.

11 (B) REMEDIES.—Not later than 120 days
12 after the date of receipt of a notice from the
13 consumer pursuant to subparagraph (A), the
14 remittance transfer provider shall—

15 (i) as applicable to the error and as
16 designated by the consumer—

17 (I) refund to the consumer the
18 total amount in United States dollars
19 that was paid by the consumer in con-
20 nection with the remittance transfer
21 that was not properly transmitted;

22 (II) make available to the des-
23 ignated recipient, without additional
24 cost to the designated recipient or to

1 the consumer, the amount appropriate
2 to resolve the error;

3 (III) provide such other remedy,
4 as determined appropriate by regula-
5 tion of the Director for the protection
6 of consumers; or

7 (ii) demonstrate to the consumer that
8 there was no error.

9 (4) REGULATIONS.—The Director, in order to
10 protect consumers, shall establish, by regulation,
11 clear and appropriate standards for remittance
12 transfer providers with respect to error resolution,
13 cancellation and refunds.

14 (d) ENFORCEMENT AUTHORITY.—The Director shall
15 have the sole authority to enforce the provisions of this
16 section, and any regulations established pursuant to this
17 section.

18 (e) APPLICABILITY OF OTHER PROVISIONS OF
19 LAW.—

20 (1) APPLICABILITY OF TITLE 18 AND TITLE 31
21 PROVISIONS.—A remittance transfer provider that is
22 a money transmitting business as defined in section
23 5330 of title 31, United States Code, may provide
24 remittance transfers only if such provider is in com-
25 pliance with the requirements of section 5330 of title

1 31, United States Code, and section 1960 of title
2 18, United States Code, as applicable.

3 (2) RULE OF CONSTRUCTION.—Nothing in this
4 section shall be construed—

5 (A) to affect the application to any trans-
6 action, to any remittance provider, or to any
7 other person of any of the provisions of sub-
8 chapter II of chapter 53 of title 31, United
9 States Code, section 21 of the Federal Deposit
10 Insurance Act, or chapter 2 of title I of Public
11 Law 91–508, or any regulations promulgated
12 thereunder; or

13 (B) to cause any fund transfer that would
14 not otherwise be treated as such under para-
15 graph (2) to be treated as an electronic fund
16 transfer, or as otherwise subject to this title, for
17 the purposes of any of the provisions referred to
18 in subparagraph (A) or any regulation pre-
19 scribed under such subparagraph.

20 (f) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) DEPOSITORY INSTITUTION.—the term “de-
23 pository institution” has the same meaning as in
24 section 3 of the Federal Deposit Insurance Act and
25 includes a credit union.

1 (2) NOT FIXED ON SEND.—The term “not fixed
2 on send” when referring to an exchange rate used
3 in a remittance transfer means an exchange rate
4 that is not set by the remittance transfer provider
5 at the time the consumer initiates the remittance
6 transfer.

7 (3) REMITTANCE TRANSFER.—The term “re-
8 mittance transfer” means the electronic (as defined
9 in section 106(2) of the Electronic Signatures in
10 Global and National Commerce Act) transfer of
11 funds to be effected or used primarily for personal,
12 family, or household purposes at the request of a
13 consumer located in any State to a person in an-
14 other country that is initiated by a remittance trans-
15 fer provider, whether or not the consumer is an ac-
16 count holder of the remittance transfer provider or
17 whether or not the remittance transfer is also an
18 electronic fund transfer, as defined in section 903 of
19 the Electronic Fund Transfer Act.

20 (4) REMITTANCE TRANSFER PROVIDER.—The
21 term “remittance transfer provider” means any per-
22 son or depository institution, or agent thereof, that
23 originates remittance transfers on behalf of con-
24 sumers in the normal course of its business, whether

1 or not the consumer is an account holder of that
2 person or depository institution.

3 (g) MODEL DISCLOSURES.—

4 (1) PUBLICATION.—Notwithstanding any provi-
5 sions of this title, the Director shall establish and
6 publish model disclosure forms to facilitate compli-
7 ance with the disclosure requirements of this section
8 and to aid the consumer in understanding the trans-
9 action to which the subject disclosure form relates.

10 (2) LANGUAGES TO BE USED IN MODEL DIS-
11 CLOSURES.—The Director shall make these disclo-
12 sures available within 1 year of the effective date of
13 this title—

14 (A) in English; and

15 (B) the ten most frequently spoken lan-
16 guages in the United States, other than
17 English, used by consumers initiating remit-
18 tance transfers, as may be determined by the
19 Director.

20 (3) USE OF AUTOMATED EQUIPMENT.—In es-
21 tablishing model forms under this subsection, the
22 Director shall consider the use by lessors of data
23 processing or similar automated equipment.

24 (4) USE OPTIONAL.—A remittance transfer pro-
25 vider may utilize a model disclosure form established

1 by the Director under this subsection for purposes
2 of compliance with this section, at the discretion of
3 the remittance transfer provider.

4 (5) EFFECT OF USE.—Any remittance transfer
5 provider that properly uses the material aspects of
6 any model disclosure form established by the Direc-
7 tor under this subsection shall be deemed to be in
8 compliance with the disclosure requirements to
9 which the form relates.

10 (h) REGULATION AND EXEMPTION AUTHORITY.—
11 Notwithstanding any other provisions of this title, the Di-
12 rector, in the sole discretion of the Director, in consulta-
13 tion with relevant Federal and State government agencies
14 may by regulation exempt from one or more requirements
15 of this section, any category of remittance transfer pro-
16 vider if the Director determines that under applicable Fed-
17 eral or State law that such category of remittance transfer
18 provider is subject to requirements substantially similar
19 to those imposed under this section or that such law gives
20 greater protection and benefit to the consumer, and that
21 there is adequate provision for enforcement.

22 (i) APPLICABILITY OF STATE LAW.—

23 (1) This section does not annul, alter, affect, or
24 exempt any person subject to the provisions of this
25 section from complying with other applicable Federal

1 law and the laws of any State relating to remittance
2 transfers and remittance transfer providers, except
3 to the extent that those laws are inconsistent with
4 the provisions of this section, and then only to the
5 extent of the inconsistency.

6 (2) Notwithstanding any other provisions of
7 this title, the Director may determine whether such
8 inconsistencies exist. A State law is not inconsistent
9 with this section if the protection such law affords
10 any consumer is greater than the protection afforded
11 by this section. If the Director determines that a
12 State requirement is inconsistent, remittance trans-
13 fer providers shall incur no liability under the law of
14 that State for a good faith failure to comply with
15 that law, notwithstanding that such determination is
16 subsequently amended, rescinded, or determined by
17 judicial or other authority to be invalid for any rea-
18 son. This section does not extend the applicability of
19 any such law to any class of persons or transactions
20 to which it would not otherwise apply.

21 (3) This section does not annul, alter, or affect
22 the laws of any State relating to the licensing or
23 registration, supervision or examination of remit-
24 tance transfer providers.

1 (4) Nothing in this section shall be construed as
2 limiting the authority of a State attorney general or
3 State regulator to bring an action or other regu-
4 latory proceeding arising solely under the law of that
5 State.

6 (j) FEDERAL CREDIT UNION ACT AMENDMENT.—
7 Paragraph (12)(A) of section 107 of the Federal Credit
8 Union Act (12 U.S.C. 1757(12)(A)) is amended by insert-
9 ing “and remittance transfers, as defined in section 4309
10 of the Consumer Financial Protection Agency Act of
11 2009” after “and domestic electronic fund transfers”.

12 (k) AUTOMATED CLEARINGHOUSE SYSTEM.—

13 (1) EXPANSION OF SYSTEM.—The Board of
14 Governors of the Federal Reserve System shall work
15 with the Federal reserve banks to expand the use of
16 the automated clearinghouse system for remittance
17 transfers to foreign countries, with a focus on coun-
18 tries that receive significant remittance transfers
19 from the United States, based on—

20 (A) the volume and dollar amount of re-
21 mittance transfers to those countries;

22 (B) the significance of the volume of such
23 transfers, relative to the external financial flows
24 of the receiving country; and

25 (C) the feasibility of such an expansion.

1 (2) REPORT TO THE CONGRESS.—Before the
2 end of the 180-day period beginning on the date of
3 the enactment of this title, and on April 30 bienni-
4 ally thereafter, the Board of Governors of the Fed-
5 eral Reserve System shall submit a report to the Di-
6 rector, the Committee on Banking, Housing, and
7 Urban Affairs of the Senate, and the Committee on
8 Financial Services of the House of Representatives
9 on the status of the automated clearinghouse system
10 and its progress in complying with the requirements
11 of this section.

12 (1) REGULATORY GUIDANCE ON REMITTANCE
13 TRANSFERS.—

14 (1) PROVISION OF GUIDELINES TO INSTITU-
15 TIONS.—The Director shall provide guidelines to all
16 remittance transfer providers regarding—

17 (A) the offering of low-cost remittance
18 transfers;

19 (B) the availability of agency services to
20 remittance transfer providers;

21 (C) compliance with the provisions of this
22 title; and

23 (D) specific options that allow remittance
24 transfer providers to take advantage of auto-
25 mated clearing systems, including the FedACH

1 International Services offered by the Board of
2 Governors of the Federal Reserve System and
3 the Federal reserve banks, to transmit remit-
4 tances at low cost.

5 (2) CONTENT OF GUIDELINES.—Guidelines pro-
6 vided to remittance transfer providers under this
7 section shall include—

8 (A) information as to the methods of pro-
9 viding remittance transfer services;

10 (B) the potential economic opportunities in
11 providing low-cost remittance transfers; and

12 (C) the potential value to depository insti-
13 tutions of broadening their financial bases to
14 include persons that use remittance transfers.

15 (3) ASSISTANCE TO FINANCIAL LITERACY COM-
16 MISSION.—The Secretary of the Treasury and each
17 agency referred to in subsection (a) shall, as part of
18 their duties as members of the Financial Literacy
19 and Education Commission, assist that Commission
20 in improving the financial literacy and education of
21 consumers who send remittances.

22 (m) REPORT ON FEASIBILITY OF AND IMPEDIMENTS
23 TO USE OF REMITTANCE HISTORY IN CALCULATION OF
24 CREDIT SCORE.—Before the end of the 365-day period
25 beginning on the date of the enactment of this title, the

1 Director shall submit a report to the President, the Com-
2 mittee on Banking, Housing, and Urban Affairs of the
3 Senate, and the Committee on Financial Services of the
4 House of Representatives regarding—

5 (1) the manner in which a consumer's remit-
6 tance history could be used to enhance a consumer's
7 credit score;

8 (2) the current legal and business model bar-
9 riers and impediments that impede the use of a con-
10 sumer's remittance history to enhance the con-
11 sumer's credit score; and

12 (3) recommendations on the manner in which
13 maximum transparency and disclosure to consumers
14 of exchange rates for remittance transfers subject to
15 this title may be accomplished, whether or not such
16 exchange rates are known at the time of origination
17 or payment by the consumer for the remittance
18 transfer, including disclosure to the sender of the ac-
19 tual exchange rate used and the amount of currency
20 that the recipient of the remittance transfer re-
21 ceived, using the values of the currency into which
22 the funds were exchanged, as contained in section s
23 919(a)(2)(D) and 919(a)(3) of the Electronic Fund
24 Transfer Act (as amended by subsection (a)).

1 (n) EFFECTIVE DATE.—This section shall apply with
2 respect to remittance transfers made after the end of the
3 180-day period beginning on the date of the enactment
4 of this title.

5 **SEC. 4310. EFFECTIVE DATE.**

6 This subtitle shall take effect on the designated
7 transfer date.

8 **SEC. 4311. NO AUTHORITY TO REQUIRE THE OFFERING OF**
9 **FINANCIAL PRODUCTS OR SERVICES.**

10 The Director may not prescribe any regulation, issue
11 any order or guidance, or take any other action, including
12 any enforcement action, the effect of which would be to
13 require a covered person to offer to any consumer a spe-
14 cific financial product or service.

15 **SEC. 4312. APPRAISAL INDEPENDENCE REQUIREMENTS.**

16 (a) PROMULGATION OF NEW REQUIREMENTS.—The
17 Director shall lead a Negotiated Rulemaking Committee
18 under the Federal Advisory Committee Act and the Nego-
19 tiated Rulemaking Act to promulgate appraisal independ-
20 ence requirements for residential loan purposes, and such
21 Committee shall promulgate such requirements not later
22 than the end of the 60-day period beginning on the date
23 of the enactment of this title.

1 (b) CERTAIN REGULATION REQUIREMENTS.—Regu-
2 lations promulgated by the Negotiated Rulemaking Com-
3 mittee under this section—

4 (1) shall not prohibit lenders, the Federal Na-
5 tional Mortgage Association, or the Federal Home
6 Loan Mortgage Corporation from accepting any ap-
7 praisal report completed by an appraiser selected,
8 retained, or compensated in any manner by a mort-
9 gage loan originator—

10 (A) licensed or registered in accordance
11 with section 1501 et seq. of the SAFE Mort-
12 gage Licensing Act of 2008; and

13 (B) subject to State or Federal laws that
14 make it unlawful for a mortgage loan originator
15 to make any payment, threat, or promise, di-
16 rectly or indirectly, to any appraiser of a prop-
17 erty, for the purposes of influencing the inde-
18 pendent judgment of the appraiser with respect
19 to the value of the property, except that nothing
20 in this section shall prohibit a person with an
21 interest in a real estate transaction from asking
22 an appraiser to—

23 (i) consider additional, appropriate
24 property information;

1 (ii) provide further detail, substan-
2 tiation, or explanation for the appraiser's
3 value conclusion; or

4 (iii) correct errors in the appraisal re-
5 port; and

6 (2) shall include a requirement that lenders and
7 their agents compensate appraisers at a rate that is
8 customary and reasonable for appraisal services per-
9 formed in the market area of the property being ap-
10 praised.

11 (c) SUNSET.—Effective on the date the appraisal
12 independence requirements are promulgated pursuant to
13 subsection (a), the Home Valuation Code of Conduct an-
14 nounced by the Federal Housing Finance Agency on De-
15 cember 23, 2008, shall have no force or effect.

16 **SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIRE-**
17 **MENTS.**

18 Not later than 180 days after the date of the enact-
19 ment of this Act, the Director shall promulgate a new rule
20 that requires banks to prominently place in each consumer
21 branch office information regarding the fees and charges
22 associated with enrollment in the bank's overdraft protec-
23 tion program.

1 **SEC. 4314. REVIEW, REPORT, AND PROGRAM WITH RE-**
2 **SPECT TO EXCHANGE FACILITATORS.**

3 (a) REVIEW.—The Director shall review all Federal
4 laws and regulations relating to the protection of persons
5 who utilize exchange facilitators.

6 (b) REPORT.—Not later than 180 days after the ef-
7 fective date of this subtitle, the Director shall submit to
8 Congress a report describing—

9 (1) recommendations for legislation to ensure
10 the appropriate protection of persons who utilize ex-
11 change facilitators;

12 (2) recommendations for updating the regula-
13 tions of Federal departments and agencies to ensure
14 the appropriate protection of such persons; and

15 (3) recommendations for Agency regulations to
16 ensure the appropriate protection of such persons.

17 (c) PROGRAM.—Not later than 180 days after the
18 date of the submission of the report under subsection (b),
19 the Director shall establish and carry out a program, uti-
20 lizing the authorities of the Agency, to protect persons
21 who utilize exchange facilitators.

22 (d) EXCHANGE FACILITATOR DEFINED.—In this sec-
23 tion, the term “exchange facilitator” means a person
24 that—

25 (1) facilitates, for a fee, an exchange of like-
26 kind property by entering into an agreement with a

1 taxpayer by which the exchange facilitator acquires
2 from the taxpayer the contractual rights to sell the
3 taxpayer's relinquished property and transfers a re-
4 placement property to the taxpayer as a qualified
5 intermediary (within the meaning of Treasury Regu-
6 lations section 1.1031(k)-1(g)(4)) or enters into an
7 agreement with the taxpayer to take title to a prop-
8 erty as an exchange accommodation titleholder
9 (within the meaning of Revenue Procedure 2000-37)
10 or enters into an agreement with a taxpayer to act
11 as a qualified trustee or qualified escrow holder
12 (within the meaning of Treasury Regulations section
13 1.1031(k)-1(g)(3));

14 (2) maintains an office for the purpose of solie-
15 iting business as an exchange facilitator; or

16 (3) purports to be an exchange facilitator by
17 advertising any of the services listed in paragraph
18 (1) or soliciting clients in printed publications, direct
19 mail, television or radio advertisements, telephone
20 calls, facsimile transmissions, or other electronic
21 communications directed to the general public for
22 purposes of providing any such services.

23 **SEC. 4315. REGULATION OF PERSON-TO-PERSON LENDING.**

24 (a) SCOPE OF EXEMPTION FROM FEDERAL SECURI-
25 TIES REGULATION.—Section 3(a) of the Securities Act of

1 1933 (15 U.S.C. 77c(a)) is amended by adding at the end
2 the following new paragraph:

3 “(15) PERSON-TO-PERSON LENDING.—

4 “(A) IN GENERAL.—Any consumer loan,
5 and any note representing a whole or fractional
6 interest in any such loan, funded or sold
7 through a person-to-person lending platform.

8 “(B) DEFINITIONS.—For purposes of this
9 paragraph:

10 “(i) CONSUMER LOAN.—The term
11 ‘consumer loan’ means a loan made to a
12 natural person, the proceeds of which are
13 intended primarily for personal, family,
14 educational, household, or business use.

15 “(ii) PERSON-TO-PERSON LENDING
16 PLATFORM.—

17 “(I) IN GENERAL.—The term
18 ‘person-to-person lending platform’
19 means an Internet website, the pri-
20 mary purpose of which is to provide a
21 transaction platform for the funding
22 or sale of individual consumer loans,
23 or the sale of notes representing whole
24 or fractional interests in individual
25 consumer loans, by matching natural

1 persons who wish to obtain such loans
2 with persons who wish to fund them,
3 or by matching persons who wish to
4 sell such loans or notes with persons
5 who wish to purchase them.

6 “(II) PROHIBITION ON MULTIPLE
7 LOANS IN A SINGLE TRANSACTION.—
8 The term ‘person-to-person lending
9 platform’ does not include any plat-
10 form on which multiple loans may be
11 funded or sold in a single transaction,
12 or on which a note representing an in-
13 terest in multiple loans or other debt
14 obligations may be sold.”.

15 (b) REGULATION BY THE AGENCY.—

16 (1) IN GENERAL.—Primary jurisdiction for the
17 regulation of the lending activities of person-to-per-
18 son lending and person-to-person lending platforms
19 is hereby vested in the Agency.

20 (2) INTERIM REQUIREMENTS.—Until the Direc-
21 tor issues and adopts disclosure requirements with
22 respect to the sale of consumer loans, or notes rep-
23 resenting whole or fractional interests therein, on
24 person-to-person lending platforms, a person-to-per-
25 son lending platform that registers the offer and sale

1 of any such notes under the Securities Act of 1933
2 shall, with respect to such registered offer and sale,
3 provide the disclosure required under the Securities
4 Act of 1933 to be contained in the registration
5 statement and prospectus and provide such disclo-
6 sure required in any periodic reports required to be
7 filed by such person-to-person lender pursuant to
8 section 13 or section 15(d) of the Securities Ex-
9 change Act of 1934.

10 (3) DEFINITIONS.—For purposes of this sub-
11 section, the terms “consumer loan”, “person-to-per-
12 son lending platform”, “prospectus”, and “registra-
13 tion statement” shall have the meaning given such
14 term under the Securities Act of 1933.

15 (c) RULEMAKING.—The Director may prescribe such
16 regulations and issue such orders as the Director con-
17 siders necessary or appropriate to implement the provi-
18 sions of this section and to provide borrower protection,
19 lender protection, consumer choice, and expanded con-
20 sumer access to fair and reasonable credit choices.

21 (d) EFFECTIVE DATE.—Notwithstanding section
22 4310, this section shall take effect on the date of the en-
23 actment of this title.

1 **SEC. 4316. TREATMENT OF REVERSE MORTGAGES.**

2 (a) IN GENERAL.—The Director shall examine the
3 practices of covered persons in connection with any reverse
4 mortgage transaction (as defined in section 103(bb) of the
5 Truth in Lending Act (15 U.S.C. 1602)) and shall pre-
6 scribe regulations identifying any acts or practices as un-
7 lawful, unfair, deceptive, or abusive in connection with a
8 reverse mortgage transaction or the offering of a reverse
9 mortgage.

10 (b) REGULATIONS.—In prescribing regulations under
11 subsection (a), the Director shall ensure that such regula-
12 tions shall—

13 (1) include requirements for—

14 (A) the purpose of preventing unlawful,
15 unfair, deceptive or abusive acts and practices
16 in connection with a reverse mortgage trans-
17 action; and

18 (B) the purpose of providing timely, appro-
19 priate, and effective disclosure to consumers in
20 connection with a reverse mortgage transaction
21 that are consistent with requirements pre-
22 scribed by the Director in connection with other
23 consumer mortgage products or services under
24 this title;

25 (2) with respect to the requirements under
26 paragraph (1), be consistent with requirements pre-

1 scribed by the Director in connection with other con-
2 sumer mortgage products or services under this title;
3 and

4 (3) provide for an integrated disclosure stand-
5 ard and model disclosures for reverse mortgage
6 transactions, consistent with section 4302(d), that
7 combines the relevant disclosures required under the
8 Truth in Lending Act (15 U.S.C. 1601 et seq.) and
9 the Real Estate Settlement Procedures Act, with the
10 disclosures required to be provided to consumers for
11 Home Equity Conversion Mortgages under section
12 255 of the National Housing Act.

13 (c) CONSULTATION.—In connection with the issuance
14 of any regulations under this section, the Director shall
15 consult with the Federal banking agencies, State bank su-
16 pervisors, the Federal Trade Commission, and the Depart-
17 ment of Housing and Urban Development, as appropriate,
18 to ensure that any proposed regulation—

19 (1) imposes substantially similar requirements
20 on all covered persons; and

21 (2) is consistent with prudential, consumer pro-
22 tection, civil rights, market or systemic objectives
23 administered by such agencies or supervisors.

24 (d) DEADLINE FOR RULEMAKING.—The Director
25 shall commence the rulemaking required under subsection

1 (a) not later than 12 months after the date of the enact-
2 ment of this Act.

3 **Subtitle D—Preservation of State**
4 **Law**

5 **SEC. 4401. RELATION TO STATE LAW.**

6 (a) IN GENERAL.—

7 (1) RULE OF CONSTRUCTION.—This title shall
8 not be construed as annulling, altering, or affecting,
9 or exempting any person subject to the provisions of
10 this title from complying with, the laws, regulations,
11 orders, or interpretations, in effect in any State, ex-
12 cept to the extent that such statute, regulation,
13 order, or interpretation is inconsistent with the pro-
14 visions of this title and then only to the extent of the
15 inconsistency.

16 (2) GREATER PROTECTION UNDER STATE
17 LAW.—For the purposes of this subsection, a stat-
18 ute, regulation, order, or interpretation in effect in
19 any State is not inconsistent with the provisions of
20 this title if the protection such statute, regulation,
21 order, or interpretation affords consumers is greater
22 than the protection provided under this title. A de-
23 termination regarding whether a statute, regulation,
24 order, or interpretation in effect in any State is in-
25 consistent with the provisions of this title may be

1 made by the Agency on its own motion or in re-
2 sponse to a nonfrivolous petition initiated by any in-
3 terested person.

4 (b) RELATION TO OTHER PROVISIONS OF ENUMER-
5 ATED CONSUMER LAWS THAT RELATE TO STATE LAW.—
6 No provision of this title, except as provided in section
7 4803, shall be construed as modifying, limiting, or super-
8 seding the operation of any provision of an enumerated
9 consumer law that relates to the application of a law in
10 effect in any State with respect to such Federal law.

11 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
12 TIONS IN RESPONSE TO STATE ACTION.—

13 (1) NOTICE OF PROPOSED RULE REQUIRED.—
14 The Agency shall issue a notice of proposed rule-
15 making whenever a majority of the States has en-
16 acted a resolution in support of the establishment or
17 modification of a consumer protection regulation by
18 the Agency.

19 (2) AGENCY CONSIDERATIONS REQUIRED FOR
20 ISSUANCE OF FINAL REGULATION.—Before pre-
21 scribing a final regulation based upon a notice
22 issued pursuant to paragraph (1), the Agency shall
23 take into account whether—

1 (A) the proposed regulation would afford
2 greater protection to consumers than any exist-
3 ing regulation;

4 (B) the intended benefits of the proposed
5 regulation for consumers would outweigh any
6 increased costs or inconveniences for con-
7 sumers, and would not discriminate unfairly
8 against any category or class of consumers; and

9 (C) a Federal banking agency has advised
10 that the proposed regulation is likely to present
11 an unacceptable safety and soundness risk to
12 insured depository institutions.

13 (3) EXPLANATION OF CONSIDERATIONS.—The
14 Agency—

15 (A) shall include a discussion of the con-
16 siderations required in subsection (b) in the
17 Federal Register notice of a final regulation
18 prescribed pursuant to this section; and

19 (B) whenever the Agency determines not to
20 prescribe a final regulation, shall publish an ex-
21 planation of such determination in the Federal
22 Register, and provide a copy of such expla-
23 nation to each State that enacted a resolution
24 in support of the proposed regulation, the Com-
25 mittee on Financial Services of the House of

1 Representatives, and the Committee on Bank-
2 ing, Housing, and Urban Affairs of the Senate.

3 (4) RESERVATION OF AUTHORITY.—No provi-
4 sion of this section shall be construed as limiting or
5 restricting the authority of the Agency to enhance
6 consumer protection standards established pursuant
7 to this title in response to its own motion or in re-
8 sponse to a request by any other interested person.

9 (5) RULE OF CONSTRUCTION.—No provision of
10 this section shall be construed as exempt the Agency
11 from complying with subchapter II of chapter 5 of
12 title 5, United States Code.

13 (6) DEFINITION.—For purposes of this section,
14 the term “consumer protection regulation” means a
15 regulation that the Agency is authorized to prescribe
16 under this title, the enumerated consumer laws, or
17 any law or authority transferred under subtitle F or
18 H.

19 **SEC. 4402. PRESERVATION OF ENFORCEMENT POWERS OF**
20 **STATES.**

21 (a) IN GENERAL.—

22 (1) ACTION BY STATE.—Any State attorney
23 general may bring a civil action in the name of such
24 State, as *parens patriae* on behalf of natural persons
25 residing in such State, in any district court of the

1 United States or State court having jurisdiction of
2 the defendant, to enforce and secure remedies under
3 provisions of this title or regulations issued there-
4 under, or otherwise provided under other law.

5 (2) RULE OF CONSTRUCTION.—No provision of
6 this title shall be construed as modifying, limiting,
7 or superseding the operation of any provision of an
8 enumerated consumer law that relates to the author-
9 ity of a State attorney general or State regulator to
10 enforce such Federal law.

11 (b) CONSULTATION REQUIRED.—

12 (1) NOTICE.—

13 (A) IN GENERAL.—Before initiating any
14 action in a court or other administrative or reg-
15 ulatory proceeding against any covered person
16 to enforce any provision of this title, including
17 any regulation prescribed by the Director under
18 this title, a State attorney general or State reg-
19 ulator shall timely provide a copy of the com-
20 plete complaint to be filed and written notice
21 describing such action or proceeding to the
22 Agency, or the Agency's designee.

23 (B) EMERGENCY ACTION.—If prior notice
24 is not practicable, the State attorney general or
25 State regulator shall provide a copy of the com-

1 plete complaint and the notice to the Agency
2 immediately upon instituting the action or pro-
3 ceeding.

4 (C) CONTENTS OF NOTICE.—The notifica-
5 tion required under this section shall, at a min-
6 imum, describe—

7 (i) the identity of the parties;

8 (ii) the alleged facts underlying the
9 proceeding; and

10 (iii) whether there may be a need to
11 coordinate the prosecution of the pro-
12 ceeding so as not to interfere with any ac-
13 tion, including any rulemaking, undertaken
14 by the Director or Agency or another Fed-
15 eral agency.

16 (2) AGENCY RESPONSE.—In any action de-
17 scribed in paragraph (1), the Agency may—

18 (A) intervene in the action as a party;

19 (B) upon intervening—

20 (i) remove the action to the appro-
21 priate United States district court, if the
22 action was not originally brought there;
23 and

24 (ii) be heard on all matters arising in
25 the action; and

1 (C) appeal any order or judgment to the
2 same extent as any other party in the pro-
3 ceeding may.

4 (c) REGULATIONS.—The Director shall prescribe reg-
5 ulations to implement the requirements of this section
6 and, from time to time, provide guidance in order to fur-
7 ther coordinate actions with the State attorneys general
8 and other regulators.

9 (d) PRESERVATION OF STATE AUTHORITY.—

10 (1) STATE CLAIMS.—No provision of this sec-
11 tion shall be construed as limiting the authority of
12 a State attorney general or State regulator to bring
13 an action or other regulatory proceeding arising sole-
14 ly under the law of that State.

15 (2) STATE SECURITIES REGULATORS.—No pro-
16 vision of this title shall be construed as altering, lim-
17 iting, or affecting the authority of a State securities
18 commission (or any agency or office performing like
19 functions) under State law to adopt rules, initiate
20 enforcement proceedings, or take any other action
21 with respect to a person regulated by such commis-
22 sion or authority.

23 (3) STATE INSURANCE REGULATORS.—No pro-
24 vision of this title shall be construed as altering, lim-
25 iting, or affecting the authority of a State insurance

1 commission or State insurance regulator under State
2 law to adopt rules, initiate enforcement proceedings,
3 or take any other action with respect to a person
4 regulated by such commission or regulator.

5 **SEC. 4403. PRESERVATION OF EXISTING CONTRACTS.**

6 This title, and regulations, orders, guidance, and in-
7 terpretations prescribed, issued, and established by the
8 Agency, shall not be construed to alter or affect the appli-
9 cability of any regulation, order, guidance, or interpreta-
10 tion prescribed, issued, and established by the Comptroller
11 of the Currency or the Director of the Office of Thrift
12 Supervision regarding the applicability of State law under
13 Federal banking law to any contract entered into on or
14 before the date of the enactment of this title, by national
15 banks, Federal savings associations, or subsidiaries there-
16 of that are regulated and supervised by the Comptroller
17 of the Currency or the Director of the Office of Thrift
18 Supervision, respectively.

19 **SEC. 4404. STATE LAW PREEMPTION STANDARDS FOR NA-**
20 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
21 **FIED.**

22 (a) IN GENERAL.—Chapter one of title LXII of the
23 Revised Statutes of the United States (12 U.S.C. 21 et
24 1 seq.) is amended by inserting after section 5136B the
25 following new section:

1 **“SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NA-**
2 **TIONAL BANKS AND SUBSIDIARIES CLARI-**
3 **FIED.**

4 “(a) DEFINITIONS.—For purposes of this section, the
5 following definitions shall apply:

6 “(1) NATIONAL BANK.—The term ‘national
7 bank’ includes—

8 “(A) any bank organized under the laws of
9 the United States; and

10 “(B) any Federal branch established in ac-
11 cordance with the International Banking Act of
12 1978.

13 “(2) STATE CONSUMER FINANCIAL LAWS.—The
14 term ‘State consumer financial law’ means a State
15 law that does not directly or indirectly discriminate
16 against national banks and that directly and specifi-
17 cally regulates the manner, content, or terms and
18 conditions of any financial transaction (as may be
19 authorized for national banks to engage in), or any
20 account related thereto, with respect to a consumer.

21 “(3) OTHER DEFINITIONS.—The terms ‘affil-
22 iate’, ‘subsidiary’, ‘includes’, and ‘including’ have the
23 same meaning as in section 3 of the Federal Deposit
24 Insurance Act.

25 “(b) PREEMPTION STANDARD.—

1 “(1) IN GENERAL.—State consumer financial
2 laws are preempted only if—

3 “(A) application of a State consumer fi-
4 nancial law would have a discriminatory effect
5 on national banks in comparison with the effect
6 of the law on a bank chartered by that State;

7 “(B) the State consumer financial law pre-
8 vents, significantly interferes with, or materially
9 impairs the ability of an institution chartered as
10 a national bank to engage in the business of
11 banking. Any preemption determination under
12 this subparagraph may be made by a court or
13 by regulation or order of the Comptroller of the
14 Currency in accordance with applicable law, on
15 a case-by-case basis. Any such determination by
16 a court shall comply with the standards set
17 forth in subsection (d) of this section, with the
18 court making the subsection (d) finding de
19 novo; or

20 “(C) the State consumer financial law is
21 preempted by Federal law other than this Act.

22 “(2) SAVINGS CLAUSE.—This Act does not pre-
23 empt or alter the applicability of any State law to
24 any subsidiary or affiliate of a national bank (other

1 than an institution chartered as a national bank)
2 that is not a depository institution.

3 “(3) CASE-BY-CASE DETERMINATION.—

4 “(A) DEFINITION.—The term ‘case-by-case
5 determination pursuant to this section’ means a
6 determination made by the Comptroller con-
7 cerning the impact of a particular State con-
8 sumer financial law on any national bank that
9 is subject to that law, or the law of any other
10 State with substantively equivalent terms.

11 “(B) CONSULTATION.—When making
12 case-by-case determination pursuant to this sec-
13 tion that a State consumer financial law of an-
14 other State has a substantively equivalent terms
15 as one that the Comptroller is preempting, the
16 Comptroller shall first consult with the Con-
17 sumer Financial Protection Agency and shall
18 take such Agency’s views into account when
19 making the determination.

20 “(4) RULE OF CONSTRUCTION.—This Act does
21 not occupy the field in any area of State law.

22 “(5) STANDARDS OF REVIEW.—

23 “(A) PREEMPTION.—A court reviewing
24 any determinations made by the Comptroller re-
25 garding preemption of a State law by this Act

1 shall assess the validity of such determinations
2 depending upon the thoroughness evident in the
3 agency's consideration, the validity of the agen-
4 cy's reasoning, the consistency with other valid
5 determinations made by the agency, and other
6 factors which the court finds persuasive and rel-
7 evant to its decision.

8 “(B) SAVINGS CLAUSE.—Except as pro-
9 vided in subparagraph (A), nothing in this sec-
10 tion shall affect the deference that a court may
11 afford to the Comptroller in making determina-
12 tions regarding the meaning or interpretation of
13 title LXII of the Revised Statutes of the United
14 States or other Federal laws.

15 “(6) COMPTROLLER DETERMINATION NOT DEL-
16 EGABLE.—Any regulation, order or determination
17 made by the Comptroller of the Currency under sub-
18 section (b)(1)(B) shall be made by the Comptroller
19 and shall not be delegable to another officer or em-
20 ployee of the Comptroller of the Currency.

21 “(c) SUBSTANTIAL EVIDENCE.—No regulation or
22 order of the Comptroller of the Currency prescribed under
23 subsection (b)(1)(B), shall be interpreted or applied so as
24 to invalidate, or otherwise declare inapplicable to a na-
25 tional bank, the provision of the State consumer financial

1 law unless substantial evidence, made on the record of the
2 proceeding, supports the specific finding that the provision
3 prevents, significantly interferes with, or materially im-
4 pairs the ability of a national bank to engage in the busi-
5 ness of banking.

6 “(d) OTHER FEDERAL LAWS.—Notwithstanding any
7 other provision of law, the Comptroller of the Currency
8 may not prescribe a regulation or order pursuant to sub-
9 section (b)(1)(B) until the Comptroller of the Currency,
10 after consultation with the Consumer Financial Protection
11 Agency, makes a finding, in writing, that a Federal law
12 provides a substantive standard, applicable to a national
13 bank, which regulates the particular conduct, activity, or
14 authority that is subject to such provision of the State
15 consumer financial law.

16 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
17 MINATIONS.—The Comptroller of the Currency shall peri-
18 odically conduct a review, through notice and public com-
19 ment, of each determination that a provision of Federal
20 law preempts a State consumer financial law. The agency
21 shall conduct such review within the 5-year period after
22 prescribing or otherwise issuing such determination, and
23 at least once during each 5-year period thereafter. After
24 conducting the review of, and inspecting the comments
25 made on, the determination, the agency shall timely pro-

1 pose to continue, amend or rescind it, as may be appro-
2 priate, in accordance with the procedures set forth in sub-
3 sections (a) and (b) of section 5244 (12 U.S.C. 43(a) and
4 (b)).

5 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
6 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
7 standing any provision of this title, a State consumer fi-
8 nancial law shall apply to a subsidiary or affiliate of a
9 national bank to the same extent that the State consumer
10 financial law applies to any person, corporation, or other
11 entity subject to such State law.

12 “(g) PRESERVATION OF POWERS RELATED TO
13 CHARGING INTEREST.—No provision of this title shall be
14 construed as altering or otherwise affecting the authority
15 conferred by section 5197 of the Revised Statutes of the
16 United States (12 U.S.C. 85) for the charging of interest
17 by a national bank at the rate allowed by the laws of the
18 State, territory or district where the bank is located, in-
19 cluding with respect to the meaning of ‘interest’ under
20 such provision.

21 “(h) TRANSPARENCY OF OCC PREEMPTION DETER-
22 MINATIONS.—The Comptroller of the Currency shall pub-
23 lish and update no less frequently than quarterly, a list
24 of preemption determinations by the Comptroller of the
25 Currency then in effect that identifies the activities and

1 practices covered by each determination and the require-
 2 ments and constraints determined to be preempted.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 for chapter one of title LXII of the Revised Statutes of
 5 the United States is amended by inserting after the item
 6 relating to section 5136B the following new item:

“5136C. State law preemption standards for national banks and subsidiaries
 clarified.”.

7 **SEC. 4405. VISITORIAL STANDARDS.**

8 Section 5136C of the Revised Statutes of the United
 9 States (as added by section 4404) is amended by adding
 10 at the end the following new subsections:

11 “(g) VISITORIAL POWERS.—

12 “(1) RULE OF CONSTRUCTION.—No provision
 13 of this title which relates to visitorial powers or oth-
 14 erwise limits or restricts the visitorial authority to
 15 which any national bank is subject shall be con-
 16 strued as limiting or restricting the authority of any
 17 attorney general (or other chief law enforcement of-
 18 ficer) of any State to bring any action in any court
 19 of appropriate jurisdiction—

20 “(A) to enforce any applicable Federal or
 21 State law, as authorized by such law; or

22 “(B) on behalf of residents of such State,
 23 to enforce any applicable provision of any Fed-
 24 eral or nonpreempted State law against a na-

1 tional bank, as authorized by such law, or to
2 seek relief as authorized by such law.

3 “(2) CONSULTATION.—The attorney general (or
4 other chief law enforcement officer) of any State
5 shall consult with the head of the agency responsible
6 for chartering and regulating national banks before
7 acting under paragraph (1).

8 “(h) ENFORCEMENT ACTIONS.—The ability of the
9 head of the agency responsible for chartering and regu-
10 lating national banks to bring an enforcement action
11 under this title or section 5 of the Federal Trade Commis-
12 sion Act shall not be construed as precluding private par-
13 ties from enforcing rights granted under Federal or State
14 law in the courts.”.

15 **SEC. 4406. CLARIFICATION OF LAW APPLICABLE TO NON-**
16 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

17 Section 5136C of the Revised Statutes of the United
18 States is amended by inserting after subsection (h) (as
19 added by section 4405) the following new subsection:

20 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
21 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
22 ATES OF NATIONAL BANKS.—

23 “(1) DEFINITIONS.—For purposes of this sec-
24 tion, the following definitions shall apply:

1 “(A) DEPOSITORY INSTITUTION, SUB-
 2 SIDIARY, AFFILIATE.—The terms ‘depository in-
 3 stitution’, ‘subsidiary’, and ‘affiliate’ have the
 4 same meanings as in section 3 of the Federal
 5 Deposit Insurance Act.

6 “(B) NONDEPOSITORY INSTITUTION.—The
 7 term ‘nondepository institution’ means any enti-
 8 ty that is not a depository institution.

9 “(2) IN GENERAL.—No provision of this title
 10 shall be construed as annulling, altering, or affecting
 11 the applicability of State law to any nondepository
 12 institution, subsidiary, other affiliate, or agent of a
 13 national bank.”.

14 **SEC. 4407. STATE LAW PREEMPTION STANDARDS FOR FED-**
 15 **ERAL SAVINGS ASSOCIATIONS AND SUBSIDI-**
 16 **ARIES CLARIFIED.**

17 (a) IN GENERAL.—The Home Owners’ Loan Act (12
 18 U.S.C. 1461 et seq.) is amended by inserting after section
 19 5 the following new section:

20 **“SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FED-**
 21 **ERAL SAVINGS ASSOCIATIONS CLARIFIED.**

22 “(a) STATE CONSUMER FINANCIAL LAW DE-
 23 FINED.—For purposes of this section, the term ‘State con-
 24 sumer financial law’ means a State law that does not di-
 25 rectly or indirectly discriminate against Federal savings

1 associations and that directly and specifically regulates the
2 manner, content, or terms and conditions of any financial
3 transaction (as may be authorized for Federal savings as-
4 sociations to engage in), or any account related thereto,
5 with respect to a consumer.

6 “(b) PREEMPTION STANDARD.—

7 “(1) IN GENERAL.—State consumer financial
8 laws are preempted only if—

9 “(A) application of a State consumer fi-
10 nancial law would have a discriminatory effect
11 on Federal savings associations in comparison
12 with the effect of the law on a bank chartered
13 by that State;

14 “(B) the State consumer financial law pre-
15 vents, significantly interferes with, or materially
16 impairs the ability of an institution chartered as
17 a Federal savings association to engage in the
18 business of banking. Any preemption deter-
19 mination under this subparagraph may be made
20 by a court or by regulation or order of the Di-
21 rector of the Office of Thrift Supervision in ac-
22 cordance with applicable law, on a case-by-case
23 basis. Any such determination by a court shall
24 comply with the standards set forth in sub-

1 section (d) of this section, with the court mak-
2 ing the subsection (d) finding de novo; or

3 “(C) the State consumer financial law is
4 preempted by Federal law other than this Act.

5 “(2) SAVINGS CLAUSE.—This Act does not pre-
6 empt or alter the applicability of any State law to
7 any subsidiary or affiliate of a Federal savings asso-
8 ciation (other than an institution chartered as a
9 Federal savings association) that is not a depository
10 institution.

11 “(3) CASE-BY-CASE DETERMINATION.—

12 “(A) DEFINITION.—The term ‘case-by-case
13 determination pursuant to this section’ means a
14 determination made by the Director concerning
15 the impact of a particular State consumer fi-
16 nancial law on any Federal savings association
17 that is subject to that law, or the law of any
18 other State with substantively equivalent terms.

19 “(B) CONSULTATION.—When making
20 case-by-case determination pursuant to this sec-
21 tion that a State consumer financial law of an-
22 other State has a substantively equivalent terms
23 as one that the Director of the Office of Thrift
24 Supervision is preempting, the Director shall
25 first consult with the Consumer Financial Pro-

1 tection Agency and shall take such Agency's
2 views into account when making the determina-
3 tion.

4 “(4) RULE OF CONSTRUCTION.—This Act does
5 not occupy the field in any area of State law.

6 “(5) STANDARDS OF REVIEW.—

7 “(A) PREEMPTION.—A court reviewing
8 any determinations made by the Director re-
9 garding preemption of a State law by this Act
10 shall assess the validity of such determinations
11 depending upon the thoroughness evident in the
12 agency's consideration, the validity of the agen-
13 cy's reasoning, the consistency with other valid
14 determinations made by the agency, and other
15 factors which the court finds persuasive and rel-
16 evant to its decision.

17 “(B) SAVINGS CLAUSE.—Except as pro-
18 vided in subparagraph (A), nothing in this sec-
19 tion shall affect the deference that a court may
20 afford to the Director in making determinations
21 regarding the meaning or interpretation of the
22 Home Owners' Loan Act or other Federal laws.

23 “(6) OTS DETERMINATION NOT DELEGABLE.—
24 Any regulation, order, or determination made by the
25 Director of the Office of Thrift Supervision under

1 subsection (b)(1)(B) shall be made by the Director
2 and shall not be delegable to another officer or em-
3 ployee of the Director of the Office of Thrift Super-
4 vision.

5 “(c) OTHER FEDERAL LAW.—Notwithstanding any
6 other provision of law, the Director of the Office of Thrift
7 Supervision may not prescribe any regulation or order
8 pursuant to subsection (b)(1)(B) until such Director, after
9 consultation with the Consumer Financial Protection
10 Agency, makes a finding, in writing, that a Federal law
11 provides a substantive standard, applicable to a Federal
12 savings association, which regulates the particular con-
13 duct, activity, or authority that is subject to such provision
14 of the State consumer financial law.

15 “(d) SUBSTANTIAL EVIDENCE.—No regulation or
16 order prescribed by the Director of the Office of Thrift
17 Supervision issued under subsection (b)(1)(B) shall be in-
18 terpreted or applied so as to invalidate, or otherwise de-
19 clare inapplicable to a Federal savings association, the
20 provision of the State consumer financial law unless sub-
21 stantial evidence, made on the record of the proceeding,
22 supports the specific finding that the provision prevents,
23 significantly interferes with, or materially impairs the abil-
24 ity of a Federal savings association to engage in the busi-
25 ness of banking.

1 “(e) PERIODIC REVIEW OF PREEMPTION DETER-
2 MINATIONS.—The Director of the Office of Thrift Super-
3 vision shall periodically conduct a review, through notice
4 and public comment, of each determination that a provi-
5 sion of Federal law preempts a State consumer financial
6 law. The agency shall conduct such review within the 5-
7 year period after prescribing or otherwise issuing such de-
8 termination, and at least once during each 5-year period
9 thereafter. After conducting the review of, and inspecting
10 the comments made on, the determination, the agency
11 shall timely propose to continue, amend or rescind it, as
12 may be appropriate, in accordance with the procedures set
13 forth in subsections (a) and (b) of section 5244 of the
14 Revised Statutes of the United States (12 U.S.C. 43(a)
15 and (b)).

16 “(f) APPLICATION OF STATE CONSUMER FINANCIAL
17 LAW TO SUBSIDIARIES AND AFFILIATES.—Notwith-
18 standing any provision of this Act, a State consumer fi-
19 nancial law shall apply to a subsidiary or affiliate of a
20 Federal savings association to the same extent that the
21 State consumer financial law applies to any person, cor-
22 poration, or other entity subject to such State law and
23 consistent with Federal law.

24 “(g) PRESERVATION OF POWERS RELATED TO
25 CHARGING OF INTEREST.—No provision of this title shall

1 be construed as altering or otherwise affecting the author-
 2 ity conferred by section 4(g) of the Home Owners' Loan
 3 Act (12 U.S.C. 1463(g)) for the charging of interest by
 4 a Federal savings association at the rate allowed by the
 5 laws of the State, territory, or district where the bank is
 6 located, including with respect to the meaning of 'interest'
 7 under such provision.

8 “(h) TRANSPARENCY OF OTS PREEMPTION DETER-
 9 MINATIONS.—The Director of the Office of Thrift Super-
 10 vision shall publish and update no less frequently than
 11 quarterly, a list of preemption determinations by such Di-
 12 rector then in effect that identifies the activities and prac-
 13 tices covered by each determination and the requirements
 14 and constraints determined to be preempted.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)
 17 is amended by striking the item relating to section 6 and
 18 inserting the following new item:

“Sec. 6. State law preemption standards for Federal savings associations clari-
 fied.”.

19 **SEC. 4408. VISITORIAL STANDARDS.**

20 Section 6 of the Home Owners' Loan Act (as added
 21 by section 4407 of this title) is amended by adding at the
 22 end the following new subsections:

23 “(g) VISITORIAL POWERS.—

1 “(1) IN GENERAL.—No provision of this Act
2 shall be construed as limiting or restricting the au-
3 thority of any attorney general (or other chief law
4 enforcement officer) of any State to bring any action
5 in any court of appropriate jurisdiction—

6 “(A) to enforce any applicable Federal or
7 State law, as authorized by such law; or

8 “(B) on behalf of residents of such State,
9 to enforce any applicable provision of any Fed-
10 eral or State law against a Federal savings as-
11 sociation, as authorized by such law, or to seek
12 relief as authorized by such law.

13 “(2) CONSULTATION.—The attorney general (or
14 other chief law enforcement officer) of any State
15 shall consult with the Director or any successor
16 agency before acting under paragraph (1).

17 “(h) ENFORCEMENT ACTIONS.—The ability of the
18 Director or any successor officer or agency to bring an
19 enforcement action under this Act or section 5 of the Fed-
20 eral Trade Commission Act shall not be construed as pre-
21 cluding private parties from enforcing rights granted
22 under Federal or State law in the courts.”.

1 **SEC. 4409. CLARIFICATION OF LAW APPLICABLE TO NON-**
2 **DEPOSITORY INSTITUTION SUBSIDIARIES.**

3 Section 6 of the Home Owners' Loan Act is amended
4 by adding after subsection (h) (as added by section 4408)
5 the following new subsection:

6 “(i) CLARIFICATION OF LAW APPLICABLE TO NON-
7 DEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILI-
8 ATES OF FEDERAL SAVINGS ASSOCIATIONS.—

9 “(1) DEFINITIONS.—For purposes of this sec-
10 tion, the following definitions shall apply:

11 “(A) DEPOSITORY INSTITUTION, SUB-
12 SIDIARY, AFFILIATE.—The terms ‘depository in-
13 stitution’, ‘subsidiary’, and ‘affiliate’ have the
14 same meanings as in section 3 of the Federal
15 Deposit Insurance Act.

16 “(B) NONDEPOSITORY INSTITUTION.—The
17 term ‘nondepository institution’ means any enti-
18 ty that is not a depository institution.

19 “(2) IN GENERAL.—No provision of this title
20 shall be construed as preempting the applicability of
21 State law to any nondepository institution, sub-
22 sidiary, other affiliate, or agent of a Federal savings
23 association.”.

24 **SEC. 4410. EFFECTIVE DATE.**

25 This subtitle shall take effect on the designated
26 transfer date.

1 **Subtitle E—Enforcement Powers**

2 **SEC. 4501. DEFINITIONS.**

3 For purposes of this subtitle, the following definitions
4 shall apply:

5 (1) AGENCY INVESTIGATION.—The term
6 “Agency investigation” means any inquiry conducted
7 by an Agency investigator for the purpose of
8 ascertaining whether any person is or has been en-
9 gaged in any conduct that violates this title, any
10 enumerated consumer law, or any regulation pre-
11 scribed or order issued by the Director under this
12 title or under the authorities transferred under sub-
13 titles F and H.

14 (2) AGENCY INVESTIGATOR.—The term “Agen-
15 cy investigator” means any attorney or investigator
16 employed by the Agency who is charged with the
17 duty of enforcing or carrying into effect any provi-
18 sions of this title, any enumerated consumer law, the
19 authorities transferred under subtitles F and H, or
20 any regulation prescribed or order issued under this
21 title or pursuant to any such authority by the Direc-
22 tor.

23 (3) COVERED EMPLOYEE.—The term “covered
24 employee” means any individual performing tasks

1 related to the provision of a financial product or
2 service to a consumer.

3 (4) CUSTODIAN.—The term “custodian” means
4 the custodian or any deputy custodian designated by
5 the Agency.

6 (5) DOCUMENTARY MATERIAL.—The term
7 “documentary material” includes the original or any
8 copy of any book, document, record, report, memo-
9 randum, paper, communication, tabulation, chart,
10 log, electronic file, or other data or data compila-
11 tions stored in any medium.

12 (6) VIOLATION.—The term “violation” means
13 any act or omission that, if proved, would constitute
14 a violation of any provision of this title, any enumer-
15 ated consumer law, any law for which authorities
16 were transferred under subtitles F and H, or of any
17 regulation prescribed or order issued by the Director
18 under this title or pursuant to any such authority.

19 **SEC. 4502. INVESTIGATIONS AND ADMINISTRATIVE DIS-**
20 **COVERY.**

21 (a) JOINT INVESTIGATIONS.—

22 (1) IN GENERAL.—The Agency or, where ap-
23 propriate, an Agency representative may engage in
24 joint investigations and requests for information.

1 (2) FAIR LENDING.—The authority under para-
2 graph (1) includes matters relating to fair lending,
3 and where appropriate, joint investigations and re-
4 quests for information with the Secretary of Hous-
5 ing and Urban Development, the Attorney General,
6 or both.

7 (b) SUBPOENAS.—

8 (1) IN GENERAL.—The Agency or an Agency
9 investigator may issue subpoenas for the attendance
10 and testimony of witnesses and the production of
11 relevant papers, books, documents, or other material
12 in connection with hearings under this title.

13 (2) FAILURE TO OBEY.—In case of contumacy
14 or refusal to obey a subpoena issued pursuant to
15 this paragraph and served upon any person, an ap-
16 propriate United States district court may, upon ap-
17 plication by the Agency or an Agency investigator
18 and after notice to such person, issue an order re-
19 quiring such person to appear and give testimony or
20 to appear and produce documents or other material,
21 or both.

22 (c) DEMANDS.—

23 (1) IN GENERAL.—Whenever the Agency has
24 reason to believe that any person may be in posses-
25 sion, custody, or control of any documentary mate-

1 rial or tangible things, or may have any information,
2 relevant to a violation, the Agency may, before the
3 institution of any proceedings under this title or
4 under any enumerated consumer law or pursuant to
5 the authorities transferred under subtitles F and H,
6 issue in writing, and cause to be served upon such
7 person, a civil investigative demand requiring such
8 person to—

9 (A) produce such documentary material for
10 inspection and copying or reproduction in the
11 form or medium requested by the Agency;

12 (B) submit such tangible things;

13 (C) file written reports or answers to ques-
14 tions;

15 (D) give oral testimony concerning docu-
16 mentary material or other information; or

17 (E) furnish any combination of such mate-
18 rial, answers, or testimony.

19 (2) REQUIREMENTS.—Each civil investigative
20 demand shall state the nature of the conduct consti-
21 tuting the alleged violation which is under investiga-
22 tion and the provision of law applicable to such vio-
23 lation.

1 (3) PRODUCTION OF DOCUMENTS.—Each civil
2 investigative demand for the production of documen-
3 tary material shall—

4 (A) describe each class of documentary
5 material to be produced under the demand with
6 such definiteness and certainty as to permit
7 such material to be fairly identified;

8 (B) prescribe a return date or dates which
9 will provide a reasonable period of time within
10 which the material so demanded may be assem-
11 bled and made available for inspection and
12 copying or reproduction; and

13 (C) identify the custodian to whom such
14 material shall be made available.

15 (4) PRODUCTION OF THINGS.—Each civil inves-
16 tigative demand for the submission of tangible
17 things shall—

18 (A) describe each class of tangible things
19 to be submitted under the demand with such
20 definiteness and certainty as to permit such
21 things to be fairly identified;

22 (B) prescribe a return date or dates which
23 will provide a reasonable period of time within
24 which the things so demanded may be assem-
25 bled and submitted; and

1 (C) identify the custodian to whom such
2 things shall be submitted.

3 (5) DEMAND FOR WRITTEN REPORTS OR AN-
4 SWERS.—Each civil investigative demand for written
5 reports or answers to questions shall—

6 (A) propound with definiteness and cer-
7 tainty the reports to be produced or the ques-
8 tions to be answered;

9 (B) prescribe a date or dates at which time
10 written reports or answers to questions shall be
11 submitted; and

12 (C) identify the custodian to whom such
13 reports or answers shall be submitted.

14 (6) ORAL TESTIMONY.—Each civil investigative
15 demand for the giving of oral testimony shall—

16 (A) prescribe a date, time, and place at
17 which oral testimony shall be commenced; and

18 (B) identify a Agency investigator who
19 shall conduct the investigation and the custo-
20 dian to whom the transcript of such investiga-
21 tion shall be submitted.

22 (7) SERVICE.—

23 (A) Any civil investigative demand may be
24 served by any Agency investigator at any place

1 within the territorial jurisdiction of any court of
2 the United States.

3 (B) Any such demand or any enforcement
4 petition filed under this section may be served
5 upon any person who is not found within the
6 territorial jurisdiction of any court of the
7 United States, in such manner as the Federal
8 Rules of Civil Procedure prescribe for service in
9 a foreign nation.

10 (8) METHOD OF SERVICE.—Service of any civil
11 investigative demand or any enforcement petition
12 filed under this section may be made upon a person,
13 including any legal entity, by—

14 (A) delivering a duly executed copy of such
15 demand or petition to the individual or to any
16 partner, executive officer, managing agent, or
17 general agent of such person, or to any agent
18 of such person authorized by appointment or by
19 law to receive service of process on behalf of
20 such person;

21 (B) delivering a duly executed copy of such
22 demand or petition to the principal office or
23 place of business of the person to be served; or

24 (C) depositing a duly executed copy in the
25 United States mails, by registered or certified

1 mail, return receipt requested, duly addressed
2 to such person at its principal office or place of
3 business.

4 (9) PROOF OF SERVICE.—

5 (A) A verified return by the individual
6 serving any civil investigative demand or any
7 enforcement petition filed under this section
8 setting forth the manner of such service shall
9 be proof of such service.

10 (B) In the case of service by registered or
11 certified mail, such return shall be accompanied
12 by the return post office receipt of delivery of
13 such demand or enforcement petition.

14 (10) PRODUCTION OF DOCUMENTARY MATE-
15 RIAL.—The production of documentary material in
16 response to a civil investigative demand shall be
17 made under a sworn certificate, in such form as the
18 demand designates, by the person, if a natural per-
19 son, to whom the demand is directed or, if not a
20 natural person, by any person having knowledge of
21 the facts and circumstances relating to such produc-
22 tion, to the effect that all of the documentary mate-
23 rial required by the demand and in the possession,
24 custody, or control of the person to whom the de-

1 mand is directed has been produced and made avail-
2 able to the custodian.

3 (11) SUBMISSION OF TANGIBLE THINGS.—The
4 submission of tangible things in response to a civil
5 investigative demand shall be made under a sworn
6 certificate, in such form as the demand designates,
7 by the person to whom the demand is directed or,
8 if not a natural person, by any person having knowl-
9 edge of the facts and circumstances relating to such
10 production, to the effect that all of the tangible
11 things required by the demand and in the posses-
12 sion, custody, or control of the person to whom the
13 demand is directed have been submitted to the cus-
14 todian.

15 (12) SEPARATE ANSWERS.—Each reporting re-
16 quirement or question in a civil investigative demand
17 shall be answered separately and fully in writing
18 under oath, unless it is objected to, in which event
19 the reasons for the objection shall be stated in lieu
20 of an answer, and it shall be submitted under a
21 sworn certificate, in such form as the demand des-
22 ignates, by the person, if a natural person, to whom
23 the demand is directed or, if not a natural person,
24 by any person responsible for answering each report-
25 ing requirement or question, to the effect that all in-

1 formation required by the demand and in the posses-
2 sion, custody, control, or knowledge of the person to
3 whom the demand is directed has been submitted.

4 (13) TESTIMONY.—

5 (A) PROCEDURE.—

6 (i) OATH AND RECORDATION.—The
7 examination of any person pursuant to a
8 demand for oral testimony served under
9 this subsection shall be taken before an of-
10 ficer authorized to administer oaths and
11 affirmations by the laws of the United
12 States or of the place where the examina-
13 tion is held. The officer before whom oral
14 testimony is to be taken shall put the wit-
15 ness on oath or affirmation and shall per-
16 sonally, or by any individual acting under
17 the direction of and in the presence of the
18 officer, record the testimony of the witness.

19 (ii) TRANSCRIPTIONS.—The testimony
20 shall be taken stenographically and tran-
21 scribed.

22 (iii) COPY TO CUSTODIAN.—After the
23 testimony is fully transcribed, the officer
24 before whom the testimony is taken shall

1 promptly transmit a copy of the transcript
2 of the testimony to the custodian.

3 (B) PARTIES PRESENT.—Any Agency in-
4 vestigator before whom oral testimony is to be
5 taken shall exclude from the place where the
6 testimony is to be taken all other persons ex-
7 cept the person giving the testimony, the attor-
8 ney for such person, the officer before whom
9 the testimony is to be taken, an investigator or
10 representative of an agency with which the
11 Agency is engaged in a joint investigation, and
12 any stenographer taking such testimony.

13 (C) LOCATION.—The oral testimony of any
14 person taken pursuant to a civil investigative
15 demand shall be taken in the judicial district of
16 the United States in which such person resides,
17 is found, or transacts business, or in such other
18 place as may be agreed upon by the Agency in-
19 vestigator before whom the oral testimony of
20 such person is to be taken and such person.

21 (D) ATTORNEY REPRESENTATION.—

22 (i) IN GENERAL.—Any person com-
23 pelled to appear under a civil investigative
24 demand for oral testimony pursuant to this

1 section may be accompanied, represented,
2 and advised by an attorney.

3 (ii) CONFIDENTIAL ADVICE.—The at-
4 torney may advise the person summoned,
5 in confidence, either upon the request of
6 such person or upon the initiative of the
7 attorney, with respect to any question
8 asked of such person.

9 (iii) OBJECTIONS.—The person sum-
10 moned or the attorney may object on the
11 record to any question, in whole or in part,
12 and shall briefly state for the record the
13 reason for the objection.

14 (iv) REFUSAL TO ANSWER.—An objec-
15 tion may properly be made, received, and
16 entered upon the record when it is claimed
17 that the person summoned is entitled to
18 refuse to answer the question on grounds
19 of any constitutional or other legal right or
20 privilege, including the privilege against
21 self-incrimination, but such person shall
22 not otherwise object to or refuse to answer
23 any question, and shall not otherwise inter-
24 rupt the oral examination, directly or
25 through such person's attorney.

1 (v) PETITION FOR ORDER.—If such
2 person refuses to answer any question, the
3 Agency may petition the district court of
4 the United States pursuant to this section
5 for an order compelling such person to an-
6 swer such question.

7 (vi) BASIS FOR COMPELLING TESTI-
8 MONY.—If such person refuses to answer
9 any question on grounds of the privilege
10 against self-incrimination, the testimony of
11 such person may be compelled in accord-
12 ance with the provisions of section 6004 of
13 title 18, United States Code.

14 (E) TRANSCRIPTS.—

15 (i) RIGHT TO EXAMINE.—After the
16 testimony of any witness is fully tran-
17 scribed, the Agency investigator shall af-
18 ford the witness (who may be accompanied
19 by an attorney) a reasonable opportunity
20 to examine the transcript.

21 (ii) READING THE TRANSCRIPT.—The
22 transcript shall be read to or by the wit-
23 ness, unless such examination and reading
24 are waived by the witness.

1 (iii) REQUEST FOR CHANGES.—Any
2 changes in form or substance which the
3 witness desires to make shall be entered
4 and identified upon the transcript by the
5 Agency investigator with a statement of
6 the reasons given by the witness for mak-
7 ing such changes.

8 (iv) SIGNATURE.—The transcript
9 shall be signed by the witness, unless the
10 witness in writing waives the signing, is ill,
11 cannot be found, or refuses to sign.

12 (v) AGENCY ACTION IN LIEU OF SIG-
13 NATURE.—If the transcript is not signed
14 by the witness during the 30-day period
15 following the date upon which the witness
16 is first afforded a reasonable opportunity
17 to examine it, the officer or the Agency in-
18 vestigator shall sign the transcript and
19 state on the record the fact of the waiver,
20 illness, absence of the witness, or the re-
21 fusals to sign, together with any reasons
22 given for the failure to sign.

23 (F) CERTIFICATION BY INVESTIGATOR.—

24 The officer shall certify on the transcript that
25 the witness was duly sworn by the investigator

1 and that the transcript is a true record of the
2 testimony given by the witness, and the officer
3 or the Agency investigator shall promptly de-
4 liver the transcript or send it by registered or
5 certified mail to the custodian.

6 (G) COPY OF TRANSCRIPT.—The Agency
7 investigator shall furnish a copy of the tran-
8 script (upon payment of reasonable charges for
9 the transcript) to the witness only, except that
10 the Agency may for good cause limit such wit-
11 ness to inspection of the official transcript of
12 the testimony of such witness.

13 (H) WITNESS FEES.—Any witness appear-
14 ing for the taking of oral testimony pursuant to
15 a civil investigative demand shall be entitled to
16 the same fees and mileage which are paid to
17 witnesses in the district courts of the United
18 States.

19 (d) CONFIDENTIAL TREATMENT OF DEMAND MATE-
20 RIAL.—

21 (1) IN GENERAL.—Materials received as a re-
22 sult of a civil investigative demand shall be subject
23 to requirements and procedures regarding confiden-
24 tiality, in accordance with regulations established by
25 the Director.

1 (2) DISCLOSURE TO CONGRESS.—No regulation
2 established by the Director regarding the confiden-
3 tiality of materials submitted to, or otherwise ob-
4 tained by, the Agency shall be intended to prevent
5 disclosure to either House of the Congress or to an
6 appropriate committee of the Congress, except that
7 the Director may prescribe regulations allowing prior
8 notice to any party that owns or otherwise provided
9 the material to the Agency and has designated such
10 material as confidential.

11 (e) PETITION FOR ENFORCEMENT.—

12 (1) IN GENERAL.—Whenever any person fails
13 to comply with any civil investigative demand duly
14 served upon such person under this section, or when-
15 ever satisfactory copying or reproduction of material
16 requested pursuant to the demand cannot be accom-
17 plished and such person refuses to surrender such
18 material, the Agency, through such officers or attor-
19 neys as the Director may designate, may file, in the
20 district court of the United States for any judicial
21 district in which such person resides, is found, or
22 transacts business, and serve upon such person, a
23 petition for an order of such court for the enforce-
24 ment of this section.

1 (2) SERVICE OF PROCESS.—All process of any
2 court to which application may be made as provided
3 in this subsection may be served in any judicial dis-
4 trict.

5 (f) PETITION FOR ORDER MODIFYING OR SETTING
6 ASIDE DEMAND.—

7 (1) IN GENERAL.—Not later than 20 days after
8 the service of any civil investigative demand upon
9 any person under subsection (b), or at any time be-
10 fore the return date specified in the demand, which-
11 ever period is shorter, or within such period exceed-
12 ing 20 days after service or in excess of such return
13 date as may be prescribed in writing, subsequent to
14 service, by any Agency investigator named in the de-
15 mand, such person may file with the Agency a peti-
16 tion for an order by the Agency modifying or setting
17 aside the demand.

18 (2) COMPLIANCE DURING PENDENCY.—The
19 time permitted for compliance with the demand in
20 whole or in part, as deemed proper and ordered by
21 the Agency, shall not run during the pendency of
22 such petition at the Agency, except that such person
23 shall comply with any portions of the demand not
24 sought to be modified or set aside.

1 (3) SPECIFIC GROUNDS.—Such petition shall
2 specify each ground upon which the petitioner relies
3 in seeking such relief, and may be based upon any
4 failure of the demand to comply with the provisions
5 of this section, or upon any constitutional or other
6 legal right or privilege of such person.

7 (g) CUSTODIAL CONTROL.—At any time during
8 which any custodian is in custody or control of any docu-
9 mentary material, tangible things, reports, answers to
10 questions, or transcripts of oral testimony given by any
11 person in compliance with any civil investigative demand,
12 such person may file, in the district court of the United
13 States for the judicial district within which the office of
14 such custodian is situated, and serve upon such custodian,
15 a petition for an order of such court requiring the per-
16 formance by such custodian of any duty imposed upon
17 such custodian by this section or regulation prescribed by
18 the Director.

19 (h) JURISDICTION OF COURT.—

20 (1) IN GENERAL.—Whenever any petition is
21 filed in any district court of the United States under
22 this section, such court shall have jurisdiction to
23 hear and determine the matter so presented, and to
24 enter such order or orders as may be required to
25 carry into effect the provisions of this section.

1 (2) APPEAL.—Any final order so entered shall
2 be subject to appeal pursuant to section 1291 of title
3 28, United States Code.

4 **SEC. 4503. HEARINGS AND ADJUDICATION PROCEEDINGS.**

5 (a) IN GENERAL.—The Agency may conduct hear-
6 ings and adjudication proceedings with respect to any per-
7 son in the manner prescribed by chapter 5 of title 5,
8 United States Code in order to ensure or enforce compli-
9 ance with—

10 (1) the provisions of this title, including any
11 regulations prescribed by the Director under this
12 title; and

13 (2) any other Federal law that the Agency is
14 authorized to enforce, including an enumerated con-
15 sumer law, and any regulations or order prescribed
16 thereunder, unless such Federal law specifically lim-
17 its the Agency from conducting a hearing or adju-
18 dication proceeding and only to the extent of such
19 limitation.

20 (b) SPECIAL RULES FOR CEASE-AND-DESIST PRO-
21 CEEDINGS.—

22 (1) ISSUANCE.—

23 (A) NOTICE OF CHARGES.—If, in the opin-
24 ion of the Agency, any covered person or service
25 provider is engaging or has engaged in an activ-

1 ity that violates a law, regulation, or any condi-
2 tion imposed in writing on the person by the
3 Agency, the Agency may issue and serve upon
4 the person a notice of charges with respect to
5 such violation.

6 (B) CONTENTS OF NOTICE.—The notice
7 shall contain a statement of the facts consti-
8 tuting any alleged violation and shall fix a time
9 and place at which a hearing will be held to de-
10 termine whether an order to cease-and-desist
11 there from should issue against the person.

12 (C) TIME OF HEARING.—A hearing under
13 this subsection shall be fixed for a date not ear-
14 lier than 30 days nor later than 60 days after
15 service of such notice unless an earlier or a
16 later date is set by the Agency at the request
17 of any party so served.

18 (D) NONAPPEARANCE DEEMED TO BE
19 CONSENT TO ORDER.—Unless the party or par-
20 ties so served shall appear at the hearing per-
21 sonally or by a duly authorized representative,
22 they shall be deemed to have consented to the
23 issuance of the cease-and-desist order.

24 (E) ISSUANCE OF ORDER.—In the event of
25 such consent, or if upon the record made at any

1 such hearing, the Agency shall find that any
2 violation specified in the notice of charges has
3 been established, the Agency may issue and
4 serve upon the person an order to cease-and-de-
5 sist from any such violation or practice.

6 (F) INCLUDES REQUIREMENT FOR COR-
7 RECTIVE ACTION.—Such order may, by provi-
8 sions which may be mandatory or otherwise, re-
9 quire the person to cease-and-desist from the
10 same, and, further, to take affirmative action to
11 correct the conditions resulting from any such
12 violation.

13 (2) EFFECTIVENESS OF ORDER.—A cease-and-
14 desist order shall take effect at the end of the 30-
15 day period beginning on the date of the service of
16 such order upon the covered person or service pro-
17 vider concerned (except in the case of a cease-and-
18 desist order issued upon consent, which shall take
19 effect at the time specified therein), and shall re-
20 main effective and enforceable as provided therein,
21 except to such extent as it is stayed, modified, termi-
22 nated, or set aside by action of the Agency or a re-
23 viewing court.

24 (3) DECISION AND APPEAL.—

1 (A) PLACE OF AND PROCEDURES FOR
2 HEARING.—Any hearing provided for in this
3 subsection shall be held in the Federal judicial
4 district or in the territory in which the resi-
5 dence or home office of the person is located
6 unless the person consents to another place,
7 and shall be conducted in accordance with the
8 provisions of chapter 5 of title 5 of the United
9 States Code.

10 (B) TIME LIMIT FOR DECISION.—After
11 such hearing, and within 90 days after the
12 Agency has notified the parties that the case
13 has been submitted to it for final decision, the
14 Agency shall—

15 (i) render its decision (which shall in-
16 clude findings of fact upon which its deci-
17 sion is predicated) and shall issue; and

18 (ii) serve upon each party to the pro-
19 ceeding an order or orders consistent with
20 the provisions of this section. Judicial re-
21 view of any such order shall be exclusively
22 as provided in this subsection.

23 (C) MODIFICATION OF ORDER GEN-
24 ERALLY.—Unless a petition for review is timely
25 filed in a court of appeals of the United States,

1 as hereinafter provided in paragraph (4), and
2 thereafter until the record in the proceeding has
3 been filed as so provided, the Agency may at
4 any time, upon such notice and in such manner
5 as it shall deem proper, modify, terminate, or
6 set aside any such order.

7 (D) MODIFICATION OF ORDER AFTER FIL-
8 ING RECORD ON APPEAL.—Upon such filing of
9 the record, the Agency may modify, terminate,
10 or set aside any such order with permission of
11 the court.

12 (4) APPEAL TO COURT OF APPEALS.—

13 (A) IN GENERAL.—Any party to any pro-
14 ceeding under this subsection may obtain a re-
15 view of any order served pursuant to this sub-
16 section (other than an order issued with the
17 consent of the person concerned) by the filing
18 in the court of appeals of the United States for
19 the circuit in which the principal office of the
20 covered person is located, or in the United
21 States Court of Appeals for the District of Co-
22 lumbia Circuit, within 30 days after the date of
23 service of such order, a written petition praying
24 that the order of the Agency be modified, termi-
25 nated, or set aside.

1 (B) TRANSMITTAL OF COPY TO THE AGEN-
2 CY.—A copy of such petition shall be forthwith
3 transmitted by the clerk of the court to the
4 Agency, and thereupon the Agency shall file in
5 the court the record in the proceeding, as pro-
6 vided in section 2112 of title 28 of the United
7 States Code.

8 (C) JURISDICTION OF COURT.—Upon the
9 filing of a petition under subparagraph (A),
10 such court shall have jurisdiction, which upon
11 the filing of the record shall except as provided
12 in the last sentence of paragraph (3) be exclu-
13 sive, to affirm, modify, terminate, or set aside,
14 in whole or in part, the order of the Agency.

15 (D) SCOPE OF REVIEW.—Review of such
16 proceedings shall be had as provided in chapter
17 7 of title 5 of the United States Code.

18 (E) FINALITY.—The judgment and decree
19 of the court shall be final, except that the same
20 shall be subject to review by the Supreme Court
21 upon certiorari, as provided in section 1254 of
22 title 28 of the United States Code.

23 (5) NO STAY.—The commencement of pro-
24 ceedings for judicial review under paragraph (4)

1 shall not, unless specifically ordered by the court,
2 operate as a stay of any order issued by the Agency.

3 (c) SPECIAL RULES FOR TEMPORARY CEASE-AND-
4 DESIST PROCEEDINGS.—

5 (1) ISSUANCE.—

6 (A) IN GENERAL.—Whenever the Agency
7 determines that the violation specified in the
8 notice of charges served upon a person, includ-
9 ing a service provider, pursuant to subsection
10 (b), or the continuation of such violation, is
11 likely to cause the person to be insolvent or oth-
12 erwise prejudice the interests of consumers be-
13 fore the completion of the proceedings con-
14 ducted pursuant to subsection (b), the Agency
15 may issue a temporary order requiring the per-
16 son to cease-and-desist from any such violation
17 or practice and to take affirmative action to
18 prevent or remedy such insolvency or other con-
19 dition pending completion of such proceedings.

20 (B) OTHER REQUIREMENTS.—Any tem-
21 porary order issued under this paragraph may
22 include any requirement authorized under this
23 subtitle.

24 (C) EFFECT DATE OF ORDER.—Any tem-
25 porary order issued under this paragraph shall

1 take effect upon service upon the person and,
2 unless set aside, limited, or suspended by a
3 court in proceedings authorized by paragraph
4 (2) of this subsection, shall remain effective and
5 enforceable pending the completion of the ad-
6 ministrative proceedings pursuant to such no-
7 tice and until such time as the Agency shall dis-
8 miss the charges specified in such notice, or if
9 a cease-and-desist order is issued against the
10 person, until the effective date of such order.

11 (2) APPEAL.—Within 10 days after the person
12 concerned has been served with a temporary cease-
13 and-desist order, the person may apply to the United
14 States district court for the judicial district in which
15 the home office of the person is located, or the
16 United States District Court for the District of Co-
17 lumbia, for an injunction setting aside, limiting, or
18 suspending the enforcement, operation, or effective-
19 ness of such order pending the completion of the ad-
20 ministrative proceedings pursuant to the notice of
21 charges served upon the person under subsection
22 (b), and such court shall have jurisdiction to issue
23 such injunction.

24 (3) INCOMPLETE OR INACCURATE RECORDS.—

1 (A) TEMPORARY ORDER.—If a notice of
2 charges served under subsection (b) specifies,
3 on the basis of particular facts and cir-
4 cumstances, that a person’s books and records
5 are so incomplete or inaccurate that the Agency
6 is unable to determine the financial condition of
7 that person or the details or purpose of any
8 transaction or transactions that may have a
9 material effect on the financial condition of that
10 person, the Agency may issue a temporary
11 order requiring—

12 (i) the cessation of any activity or
13 practice which gave rise, whether in whole
14 or in part, to the incomplete or inaccurate
15 state of the books or records; or

16 (ii) affirmative action to restore such
17 books or records to a complete and accu-
18 rate state, until the completion of the pro-
19 ceedings under subsection (b)(1).

20 (B) EFFECTIVE PERIOD.—Any temporary
21 order issued under subparagraph (A)—

22 (i) shall take effect upon service; and

23 (ii) unless set aside, limited, or sus-
24 pended by a court in proceedings under

1 paragraph (2), shall remain in effect and
2 enforceable until the earlier of—

3 (I) the completion of the pro-
4 ceeding initiated under subsection (b)
5 in connection with the notice of
6 charges; or

7 (II) the date the Agency deter-
8 mines, by examination or otherwise,
9 that the person's books and records
10 are accurate and reflect the financial
11 condition of the person.

12 (d) SPECIAL RULES FOR ENFORCEMENT OF OR-
13 DERS.—

14 (1) IN GENERAL.—The Agency may in its dis-
15 cretion apply to the United States district court
16 within the jurisdiction of which the principal office
17 of the person is located, for the enforcement of any
18 effective and outstanding notice or order issued
19 under this section, and such court shall have juris-
20 diction and power to order and require compliance
21 herewith.

22 (2) EXCEPTION.—Except as otherwise provided
23 in this subsection, no court shall have jurisdiction to
24 affect by injunction or otherwise the issuance or en-
25 forcement of any notice or order or to review, mod-

1 ify, suspend, terminate, or set aside any such notice
2 or order.

3 (e) REGULATIONS.—The Director shall prescribe reg-
4 ulations establishing such procedures as may be necessary
5 to carry out this section.

6 **SEC. 4504. LITIGATION AUTHORITY.**

7 (a) IN GENERAL.—If any person violates a provision
8 of this title, any enumerated consumer law, any law for
9 which authorities were transferred under subtitles F and
10 H, or any regulation prescribed or order issued by the Di-
11 rector under this title or pursuant to any such authority,
12 the Agency may commence a civil action against such per-
13 son to impose a civil penalty and to seek all appropriate
14 legal and equitable relief including a permanent or tem-
15 porary injunction as permitted by law.

16 (b) REPRESENTATION.—The Agency may act in its
17 own name and through its own attorneys in enforcing any
18 provision of this title, regulations under this title, or any
19 other law or regulation, or in any action, suit, or pro-
20 ceeding to which the Agency is a party.

21 (c) COMPROMISE OF ACTIONS.—The Agency may
22 compromise or settle any action if such compromise is ap-
23 proved by the court.

24 (d) NOTICE TO THE ATTORNEY GENERAL.—When
25 commencing a civil action under this title, any enumerated

1 consumer law, any law for which authorities were trans-
2 ferred under subtitles F and H, or any regulation there-
3 under, the Agency shall notify the Attorney General.

4 (e) APPEARANCE BEFORE THE SUPREME COURT.—
5 The Agency may represent itself in its own name before
6 the Supreme Court of the United States, if—

7 (1) the Agency makes a written request to the
8 Attorney General within the 10-day period which be-
9 gins on the date of entry of the judgment which
10 would permit any party to file a petition for writ of
11 certiorari; and

12 (2) the Attorney General concurs with such re-
13 quest or fails to take action within 60 days of the
14 Agency's request.

15 (f) FORUM.—Any civil action brought under this title
16 may be brought in a United States district court or in
17 any court of competent jurisdiction of a state in a district
18 in which the defendant is located or resides or is doing
19 business, and such court shall have jurisdiction to enjoin
20 such person and to require compliance with this title, any
21 enumerated consumer law, any law for which authorities
22 were transferred under subtitles F and H, or any regula-
23 tion prescribed or order issued by the Director under this
24 title or pursuant to any such authority.

25 (g) TIME FOR BRINGING ACTION.—

1 (1) IN GENERAL.—Except as otherwise per-
2 mitted by law or equity, no action may be brought
3 under this title more than 3 years after the date of
4 the discovery of the violation to which an action re-
5 lates.

6 (2) LIMITATIONS UNDER OTHER FEDERAL
7 LAWS.—

8 (A) For purposes of this section, an action
9 arising under this title shall not include claims
10 arising solely under enumerated consumer laws.

11 (B) In any action arising solely under an
12 enumerated consumer law, the Agency may
13 commence, defend, or intervene in the action in
14 accordance with the requirements of that law,
15 as applicable.

16 (C) In any action arising solely under the
17 laws for which authorities were transferred by
18 subtitles F and H, the Agency may commence,
19 defend, or intervene in the action in accordance
20 with the requirements of that law, as applicable.

21 **SEC. 4505. RELIEF AVAILABLE.**

22 (a) ADMINISTRATIVE PROCEEDINGS OR COURT AC-
23 TIONS.—

24 (1) JURISDICTION.—The court (or Agency, as
25 the case may be) in an action or adjudication pro-

1 ceeding brought under this title, any enumerated
2 consumer law, or any law for which authorities were
3 transferred by subtitles F and H, shall have jurisdic-
4 tion to grant any appropriate legal or equitable relief
5 with respect to a violation of this title, any enumer-
6 ated consumer law, and any law for which authori-
7 ties were transferred by subtitles F and H, including
8 a violation of a regulation prescribed or order issued
9 under this title, any enumerated consumer law and
10 any law for which authorities were transferred by
11 subtitles F and H.

12 (2) RELIEF.—Such relief may include—

13 (A) rescission or reformation of contracts;

14 (B) refund of moneys or return of real
15 property;

16 (C) restitution;

17 (D) disgorgement or compensation for un-
18 just enrichment;

19 (E) payment of damages;

20 (F) public notification regarding the viola-
21 tion, including the costs of notification;

22 (G) limits on the activities or functions of
23 the person; and

24 (H) civil money penalties under subsection

25 (c).

1 (3) NO EXEMPLARY OR PUNITIVE DAMAGES.—

2 Nothing in this subsection shall be construed as au-
3 thorizing the imposition of exemplary or punitive
4 damages.

5 (b) RECOVERY OF COSTS.—In any action brought by
6 the Agency, a State attorney general, or a State bank su-
7 pervisor to enforce any provision of this title, any enumer-
8 ated consumer law, any law for which authorities were
9 transferred by subtitles F and H, or any regulation pre-
10 scribed or order issued by the Director under this title
11 or pursuant to any such authority, the Agency, State at-
12 torney general, or State bank supervisor may recover the
13 costs incurred by such Agency, attorney general, or super-
14 visor in connection with prosecuting such action if the
15 Agency, State attorney general, or State bank supervisors
16 (as the case may be) is the prevailing party in the action.

17 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
18 TRATIVE ACTIONS.—

19 (1) Any person that violates, through any act or
20 omission, any provision of this title, any enumerated
21 consumer law, or any regulation prescribed or order
22 issued by the Director under this title shall forfeit
23 and pay a civil penalty pursuant to this subsection
24 determined as follows:

1 (A) FIRST TIER.—For any violation of any
2 law, regulation, final order or condition imposed
3 in writing by the Agency, or for any failure to
4 pay any fee or assessment imposed by the
5 Agency (including any fee or assessment for
6 which a related person may be liable), a civil
7 penalty shall not exceed \$5,000 for each day
8 during which such violation continues.

9 (B) SECOND TIER.—Notwithstanding
10 paragraph (A), for any person that recklessly
11 engages in a violation of this title, any enumer-
12 ated consumer law, or any regulation prescribed
13 or order issued by the Director under this title,
14 relating to the provision of an alternative con-
15 sumer financial product or service, a civil pen-
16 alty shall not exceed \$25,000 for each day dur-
17 ing which such violation continues.

18 (C) THIRD TIER.—Notwithstanding sub-
19 paragraphs (A) and (B), for any person that
20 knowingly violates this title, any enumerated
21 consumer law, or any regulation prescribed or
22 order issued by the Director under this title, a
23 civil penalty shall not exceed \$1,000,000 for
24 each day during which such violation continues.

1 (2) MITIGATING FACTORS.—In determining the
2 amount of any penalty assessed under paragraph
3 (1), the Agency or the court shall take into account
4 the appropriateness of the penalty with respect to—

5 (A) the size of financial resources and good
6 faith of the person charged;

7 (B) the gravity of the violation or failure
8 to pay;

9 (C) the severity of the risks to or losses of
10 the consumer, which may take into account the
11 number of products or services sold or provided;

12 (D) the history of previous violations; and

13 (E) such other matters as justice may re-
14 quire.

15 (3) AUTHORITY TO MODIFY OR REMIT PEN-
16 ALTY.—The Agency may compromise, modify, or
17 remit any penalty which may be assessed or had al-
18 ready been assessed under paragraph (1). The
19 amount of such penalty, when finally determined,
20 shall be exclusive of any sums owed by the person
21 to the United States in connection with the costs of
22 the proceeding, and may be deducted from any sums
23 owing by the United States to the person charged.

24 (4) NOTICE AND HEARING.—No civil penalty
25 may be assessed with respect to a violation of this

1 title, any enumerated consumer law, or any regula-
2 tion prescribed or order issued by the Director, un-
3 less—

4 (A) the Agency gives notice and an oppor-
5 tunity for a hearing to the person accused of
6 the violation; or

7 (B) the appropriate court has ordered such
8 assessment and entered judgment in favor of
9 the Agency.

10 **SEC. 4506. REFERRALS FOR CRIMINAL PROCEEDINGS.**

11 Whenever the Agency obtains evidence that any per-
12 son, either domestic or foreign, has engaged in conduct
13 that may constitute a violation of Federal criminal law,
14 the Agency shall transmit such evidence to the Attorney
15 General, who may institute criminal proceedings under ap-
16 propriate law. No provision of this section shall be con-
17 strued as affecting any other authority of the Agency to
18 disclose information.

19 **SEC. 4507. EMPLOYEE PROTECTION.**

20 (a) No covered person shall terminate or in any other
21 way discriminate against, or cause to be terminated or dis-
22 criminated against, any covered employee or any author-
23 ized representative of covered employees by reason of the
24 fact that such employee or representative whether at the
25 employee's initiative or in the ordinary course of the em-

1 ployee's duties (or any person acting pursuant to a request
2 of the employee) has—

3 (1) provided information to the Agency or to
4 any other state, local, Federal, or tribal government
5 entity, filed, instituted or caused to be filed or insti-
6 tuted any proceeding under this title, any enumer-
7 ated consumer law, any law for which authorities
8 were transferred by subtitles F and H, or has testi-
9 fied or is about to testify in any proceeding resulting
10 from the administration or enforcement of the provi-
11 sions of this title; or

12 (2) objected to, or refused to participate in, any
13 activity, policy, practice, or assigned task that the
14 employee (or other such person) reasonably believed
15 to be in violation of any law, rule, or regulation, or
16 to be unfair, deceptive, or abusive and likely to cause
17 specific and substantial injury to one or more con-
18 sumers.

19 (b)(1) A person who believes that he or she has been
20 discharged or otherwise discriminated against by any per-
21 son in violation of subsection (a) may, not later than 180
22 days after the date on which such violation occurs, file
23 (or have any person file on his or her behalf) a complaint
24 with the Secretary of Labor alleging such discharge or dis-
25 crimination and identifying the person responsible for

1 such act. Upon receipt of such a complaint, the Secretary
2 shall notify, in writing, the person named in the complaint
3 of the filing of the complaint, of the allegations contained
4 in the complaint, of the substance of evidence supporting
5 the complaint, and of the opportunities that will be af-
6 farded to such person under paragraph (2).

7 (2)(A) Not later than 60 days after the date of re-
8 ceipt of a complaint filed under paragraph (1) and after
9 affording the complainant and the person named in the
10 complaint an opportunity to submit to the Secretary a
11 written response to the complaint and an opportunity to
12 meet with a representative of the Secretary to present
13 statements from witnesses, the Secretary shall initiate an
14 investigation and determine whether there is reasonable
15 cause to believe that the complaint has merit and notify,
16 in writing, the complainant and the person alleged to have
17 committed a violation of subsection (a) of the Secretary's
18 findings. If the Secretary concludes that there is reason-
19 able cause to believe that a violation of subsection (a) has
20 occurred, the Secretary shall accompany the Secretary's
21 findings with a preliminary order providing the relief pre-
22 scribed by paragraph (3)(B). Not later than 30 days after
23 the date of notification of findings under this paragraph,
24 either the person alleged to have committed the violation
25 or the complainant may file objections to the findings or

1 preliminary order, or both, and request a hearing on the
2 record. The filing of such objections shall not operate to
3 stay any reinstatement remedy contained in the prelimi-
4 nary order. Any such hearing shall be conducted expedi-
5 tiously. If a hearing is not requested in such 30-day pe-
6 riod, the preliminary order shall be deemed a final order
7 that is not subject to judicial review.

8 (B)(i) The Secretary shall dismiss a complaint filed
9 under this subsection and shall not conduct an investiga-
10 tion otherwise required under subparagraph (A) unless the
11 complainant makes a prima facie showing that any behav-
12 ior described in paragraphs (1) through (4) of subsection
13 (a) was a contributing factor in the unfavorable personnel
14 action alleged in the complaint.

15 (ii) Notwithstanding a finding by the Secretary that
16 the complainant has made the showing required under
17 clause (i), no investigation otherwise required under sub-
18 paragraph (A) shall be conducted if the employer dem-
19 onstrates, by clear and convincing evidence, that the em-
20 ployer would have taken the same unfavorable personnel
21 action in the absence of that behavior.

22 (iii) The Secretary may determine that a violation of
23 subsection (a) has occurred only if the complainant dem-
24 onstrates that any behavior described in paragraphs (1)
25 through (4) of subsection (a) was a contributing factor

1 in the unfavorable personnel action alleged in the com-
2 plaint.

3 (iv) Relief may not be ordered under subparagraph
4 (A) if the employer demonstrates by clear and convincing
5 evidence that the employer would have taken the same un-
6 favorable personnel action in the absence of that behavior.

7 (3)(A) Not later than 120 days after the date of con-
8 clusion of any hearing under paragraph (2), the Secretary
9 shall issue a final order providing the relief prescribed by
10 this paragraph or denying the complaint. At any time be-
11 fore issuance of a final order, a proceeding under this sub-
12 section may be terminated on the basis of a settlement
13 agreement entered into by the Secretary, the complainant,
14 and the person alleged to have committed the violation.

15 (B) If, in response to a complaint filed under para-
16 graph (1), the Secretary determines that a violation of
17 subsection (a) has occurred, the Secretary shall order the
18 person who committed such violation—

19 (i) to take affirmative action to abate the viola-
20 tion;

21 (ii) to reinstate the complainant to his or her
22 former position together with compensation (includ-
23 ing back pay) and restore the terms, conditions, and
24 privileges associated with his or her employment;
25 and

1 (iii) to provide compensatory damages to the
2 complainant. If such an order is issued under this
3 paragraph, the Secretary, at the request of the com-
4 plainant, shall assess against the person against
5 whom the order is issued a sum equal to the aggre-
6 gate amount of all costs and expenses (including at-
7 torneys' and expert witness fees) reasonably in-
8 curred, as determined by the Secretary, by the com-
9 plainant for, or in connection with, the bringing of
10 the complaint upon which the order was issued.

11 (C) If the Secretary finds that a complaint under
12 paragraph (1) is frivolous or has been brought in bad
13 faith, the Secretary may award to the prevailing employer
14 a reasonable attorneys' fee, not exceeding \$ 1,000, to be
15 paid by the complainant.

16 (4) If the Secretary has not issued a final decision
17 within 210 days after the filing of the complaint, or within
18 90 days after receiving a written determination, the com-
19 plainant may bring an action at law or equity for de novo
20 review in the appropriate district court of the United
21 States with jurisdiction, which shall have jurisdiction over
22 such an action without regard to the amount in con-
23 troversy, and which action shall, at the request of either
24 party to such action, be tried by the court with a jury.
25 The proceedings shall be governed by the same legal bur-

1 dens of proof specified in paragraph (2)(B). The court
2 shall have jurisdiction to grant all relief necessary to make
3 the employee whole, including injunctive relief and com-
4 pensatory damages, including—

5 (A) reinstatement with the same seniority sta-
6 tus that the employee would have had, but for the
7 discharge or discrimination;

8 (B) the amount of back pay, with interest; and

9 (C) compensation for any special damages sus-
10 tained as a result of the discharge or discrimination,
11 including litigation costs, expert witness fees, and
12 reasonable attorney's fees.

13 (5)(A) Unless the complainant brings an action under
14 paragraph (4), any person adversely affected or aggrieved
15 by a final order issued under paragraph (3) may obtain
16 review of the order in the United States Court of Appeals
17 for the circuit in which the violation, with respect to which
18 the order was issued, allegedly occurred or the circuit in
19 which the complainant resided on the date of such viola-
20 tion. The petition for review must be filed not later than
21 60 days after the date of the issuance of the final order
22 of the Secretary. Review shall conform to chapter 7 of title
23 5, United States Code. The commencement of proceedings
24 under this subparagraph shall not, unless ordered by the
25 court, operate as a stay of the order.

1 (B) An order of the Secretary with respect to which
2 review could have been obtained under subparagraph (A)
3 shall not be subject to judicial review in any criminal or
4 other civil proceeding.

5 (6) Whenever any person has failed to comply with
6 an order issued under paragraph (3), the Secretary may
7 file a civil action in the United States district court for
8 the district in which the violation was found to occur, or
9 in the United States district court for the District of Co-
10 lumbia, to enforce such order. In actions brought under
11 this paragraph, the district courts shall have jurisdiction
12 to grant all appropriate relief including, but not limited
13 to, injunctive relief and compensatory damages.

14 (7)(A) A person on whose behalf an order was issued
15 under paragraph (3) may commence a civil action against
16 the person to whom such order was issued to require com-
17 pliance with such order. The appropriate United States
18 district court shall have jurisdiction, without regard to the
19 amount in controversy or the citizenship of the parties,
20 to enforce such order.

21 (B) The court, in issuing any final order under this
22 paragraph, may award costs of litigation (including rea-
23 sonable attorneys' and expert witness fees) to any party
24 whenever the court determines such award is appropriate.

1 (c) Any nondiscretionary duty imposed by this section
2 shall be enforceable in a mandamus proceeding brought
3 under section 1361 of title 28, United States Code.

4 (d)(1) Except as provided under paragraph (3), the
5 rights and remedies provided for in this section may not
6 be waived by any agreement, policy, form, or condition of
7 employment, including by any predispute arbitration
8 agreement.

9 (2) Except as provided under paragraph (3), no
10 predispute arbitration agreement shall be valid or enforce-
11 able if it requires arbitration of a dispute arising under
12 this section.

13 (e) Notwithstanding paragraphs (1) and (2), an arbi-
14 tration provision in a collective bargaining agreement shall
15 be enforceable as to disputes arising under paragraph
16 (a)(2) of this section unless the Agency determines by rule
17 that such provision is inconsistent with the purposes of
18 this Act.

19 (f) Any employer receiving covered funds shall post
20 notice of the rights and remedies provided under this sec-
21 tion.

22 **SEC. 4508. NO PRIVATE RIGHT OF ACTION.**

23 Nothing in this title shall be construed to create a
24 private right of action, but this section shall not be con-
25 strued or interpreted to deny any private right of action

1 arising under the enumerated consumer laws or the au-
2 thorities transferred under subtitle F or H.

3 **SEC. 4509. EFFECTIVE DATE.**

4 This subtitle shall take effect on the designated
5 transfer date.

6 **Subtitle F—Transfer of Functions**
7 **and Personnel; Transitional**
8 **Provisions**

9 **SEC. 4601. TRANSFER OF CERTAIN FUNCTIONS.**

10 (a) IN GENERAL.—Except as provided in subsection
11 (b), consumer financial protection functions are trans-
12 ferred as follows:

13 (1) BOARD OF GOVERNORS.—

14 (A) TRANSFER OF FUNCTIONS.—All con-
15 sumer financial protection functions of the
16 Board of Governors are transferred to the Di-
17 rector.

18 (B) BOARD OF GOVERNORS' AUTHORITY.—
19 The Director shall have all powers and duties
20 that were vested in the Board of Governors, re-
21 lating to consumer financial protection func-
22 tions, on the day before the designated transfer
23 date.

24 (C) RETENTION OF CONSUMER ADVISORY
25 COUNCIL.—

1 (i) RETENTION AND CONTINU-
2 ATION.—Notwithstanding the transfer of
3 functions under subparagraph (A), the
4 Consumer Advisory Council established by
5 the Board of Governors pursuant to sec-
6 tion 703(b) of Public Law 90–321 (15
7 U.S.C. 1691b(b)) shall continue as an enti-
8 ty within the Federal Reserve System.

9 (ii) ADDITIONAL FUNCTIONS.—In ad-
10 dition to the functions performed by the
11 Consumer Advisory Council as of the des-
12 ignated transfer date, the Consumer Advi-
13 sory Council shall—

14 (I) submit to the Director (and
15 make available to the public) an an-
16 nual set of recommendations for con-
17 sumer protection regulations and meet
18 with the Director to discuss the an-
19 nual recommendations;

20 (II) meet with the Board of Gov-
21 ernors of the Federal Reserve System
22 at least once a year and provide oral
23 or written representations concerning
24 matters within the jurisdiction of the
25 Board; and

1 (III) call for information and
2 make recommendations in regard to
3 consumer protection regulations.

4 (iii) RESPONSE TO RECOMMENDA-
5 TIONS.—When the Chair of the Federal
6 Reserve testifies before Congress, the
7 Chair shall also testify about the rec-
8 ommendations of the Consumer Advisory
9 Council under clause (ii)(II) and its rec-
10 ommendations for consumer protection
11 regulations.

12 (2) COMPTROLLER OF THE CURRENCY.—

13 (A) TRANSFER OF FUNCTIONS.—All con-
14 sumer financial protection functions of the
15 Comptroller of the Currency are transferred to
16 the Director.

17 (B) COMPTROLLER'S AUTHORITY.—The
18 Director shall have all powers and duties that
19 were vested in the Comptroller of the Currency,
20 relating to consumer financial protection func-
21 tions, on the day before the designated transfer
22 date.

23 (3) DIRECTOR OF THE OFFICE OF THRIFT SU-
24 PERVISION.—

1 (A) TRANSFER OF FUNCTIONS.—All con-
2 sumer financial protection functions of the Di-
3 rector of the Office of Thrift Supervision are
4 transferred to the Director.

5 (B) DIRECTOR'S AUTHORITY.—The Direc-
6 tor shall have all powers and duties that were
7 vested in the Director of the Office of Thrift
8 Supervision, relating to consumer financial pro-
9 tection functions, on the day before the des-
10 ignated transfer date.

11 (4) FEDERAL DEPOSIT INSURANCE CORPORA-
12 TION.—

13 (A) TRANSFER OF FUNCTIONS.—All con-
14 sumer financial protection functions of the Fed-
15 eral Deposit Insurance Corporation are trans-
16 ferred to the Director.

17 (B) CORPORATION'S AUTHORITY.—The Di-
18 rector shall have all powers and duties that
19 were vested in the Federal Deposit Insurance
20 Corporation, relating to consumer financial pro-
21 tection functions, on the day before the des-
22 ignated transfer date.

23 (5) FEDERAL TRADE COMMISSION.—

24 (A) TRANSFER OF FUNCTIONS.—Except as
25 provided in subparagraph (C), the consumer fi-

1 nancial protection functions of the Federal
2 Trade Commission that are contained within
3 the enumerated consumer laws are transferred
4 to the Agency, except as provided in section
5 4202(e). This transfer shall not be subject to
6 the provisions of section 3503 of title 5, United
7 States Code.

8 (B) FEDERAL TRADE COMMISSION AU-
9 THORITY.—The Agency shall have all powers
10 and duties that were vested in the Federal
11 Trade Commission that were contained within
12 the enumerated statutes, except as provided in
13 section 4202(e), on the day before the des-
14 ignated transfer date.

15 (6) NATIONAL CREDIT UNION ADMINISTRA-
16 TION.—

17 (A) TRANSFER OF FUNCTIONS.—All con-
18 sumer financial protection functions of the Na-
19 tional Credit Union Administration are trans-
20 ferred to the Director.

21 (B) NATIONAL CREDIT UNION ADMINIS-
22 TRATION'S AUTHORITY.—The Director shall
23 have all powers and duties that were vested in
24 the National Credit Union Administration, re-
25 lating to consumer financial protection func-

1 tions, on the day before the designated transfer
2 date.

3 (7) SECRETARY OF HOUSING AND URBAN DE-
4 VELOPMENT.—

5 (A) TRANSFER OF FUNCTIONS.—All con-
6 sumer protection functions of the Secretary of
7 Housing and Urban Development relating to
8 the Real Estate Settlement Procedures Act of
9 1974 and the Secure and Fair Enforcement for
10 Mortgage Licensing Act of 2008 are transferred
11 to the Director.

12 (B) SECRETARY OF HUD'S AUTHORITY.—
13 The Director shall have all powers and duties
14 that were vested in the Secretary of Housing
15 and Urban Development relating to the Real
16 Estate Settlement Procedures Act of 1974 and
17 the Secure and Fair Enforcement for Mortgage
18 Licensing Act of 2008, on the day before the
19 designated transfer date.

20 (b) TRANSFERS OF FUNCTIONS SUBJECT TO EN-
21 FORCEMENT AUTHORITY REMAINING WITH TRANSFEROR
22 AGENCIES.—The transfers of functions in subsection (a)
23 shall not affect the authority of the agencies identified in
24 subsection (a) from initiating enforcement proceedings

1 under the circumstances described in paragraph (2) or (3)
2 of section 4202(e).

3 (c) TERMINATION OF AUTHORITY OF TRANSFEROR
4 AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-
5 CIAL PROTECTION PURPOSES.—Authorities of the agen-
6 cies identified in subsection (a) to assess and collect fees
7 to cover the cost of conducting consumer financial protec-
8 tion functions transferred under subsection (a) shall ter-
9minate on the day before the designated transfer date.

10 (d) CONSUMER FINANCIAL PROTECTION FUNCTIONS
11 DEFINED.—For purposes of this subtitle, the term “con-
12 sumer financial protection functions” means research,
13 rulemaking, issuance of orders or guidance, supervision,
14 examination, and enforcement activities, powers, and du-
15 ties relating to the provision of consumer financial prod-
16 ucts or services, including the authority to assess and col-
17 lect fees for those purposes, except that such term shall
18 not include any such function relating to an agency’s re-
19 sponsibilities under the Community Reinvestment Act of
20 1977.

21 (e) EFFECTIVE DATE.—Subsections (a) and (b) shall
22 take effect on the designated transfer date.

23 **SEC. 4602. DESIGNATED TRANSFER DATE.**

24 The designated transfer date shall be 180 days after
25 the date of enactment of this title.

1 **SEC. 4603. SAVINGS PROVISIONS.**

2 (a) BOARD OF GOVERNORS.—

3 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
4 TIONS NOT AFFECTED.—Section 4601(a)(1) shall
5 not affect the validity of any right, duty, or obliga-
6 tion of the United States, the Board of Governors
7 (or any Federal reserve bank), or any other person
8 that—

9 (A) arises under any provision of law relat-
10 ing to any consumer financial protection func-
11 tion of the Board of Governors transferred to
12 the Director by this title; and

13 (B) existed on the day before the des-
14 ignated transfer date.

15 (2) CONTINUATION OF SUITS.—this title shall
16 not abate any proceeding commenced by or against
17 the Board of Governors (or any Federal reserve
18 bank) before the designated transfer date with re-
19 spect to any consumer financial protection function
20 of the Board of Governors (or any Federal reserve
21 bank) transferred to the Director by this title, ex-
22 cept that the Director shall be substituted for the
23 Board of Governors (or Federal reserve bank) as a
24 party to any such proceeding as of the designated
25 transfer date.

26 (b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

1 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
2 TIONS NOT AFFECTED.—Section 4601(a)(4) shall
3 not affect the validity of any right, duty, or obliga-
4 tion of the United States, the Federal Deposit In-
5 surance Corporation, the Board of Directors of that
6 Corporation, or any other person, that—

7 (A) arises under any provision of law relat-
8 ing to any consumer financial protection func-
9 tion of the Federal Deposit Insurance Corpora-
10 tion transferred to the Director by this title;
11 and

12 (B) existed on the day before the des-
13 ignated transfer date.

14 (2) CONTINUATION OF SUITS.—this title shall
15 not abate any proceeding commenced by or against
16 the Federal Deposit Insurance Corporation (or the
17 Board of Directors of that Corporation) before the
18 designated transfer date with respect to any con-
19 sumer financial protection function of the Federal
20 Deposit Insurance Corporation transferred to the
21 Director by this title, except that the Director shall
22 be substituted for the Federal Deposit Insurance
23 Corporation (or Board of Directors) as a party to
24 any such proceeding as of the designated transfer
25 date.

1 (c) FEDERAL TRADE COMMISSION.—Section
2 4601(a)(5) shall not affect the validity of any right, duty,
3 or obligation of the United States, the Federal Trade
4 Commission, or any other person, that—

5 (1) arises under any provision of law relating to
6 any consumer financial protection function of the
7 Federal Trade Commission transferred to the Direc-
8 tor by this title; and

9 (2) existed on the day before the designated
10 transfer date.

11 (d) NATIONAL CREDIT UNION ADMINISTRATION.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
13 TIONS NOT AFFECTED.—Section 4601(a)(6) shall
14 not affect the validity of any right, duty, or obliga-
15 tion of the United States, the National Credit Union
16 Administration, the National Credit Union Adminis-
17 tration Board, or any other person, that—

18 (A) arises under any provision of law relat-
19 ing to any consumer financial protection func-
20 tion of the National Credit Union Administra-
21 tion transferred to the Director by this title;
22 and

23 (B) existed on the day before the des-
24 ignated transfer date.

(2) CONTINUATION OF SUITS.—this title shall not abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Director by this title, except that the Director shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 4601(a)(2) shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Director by this title; and

(B) existed on the day before the designated transfer date.

1 (2) CONTINUATION OF SUITS.—this title shall
2 not abate any proceeding commenced by or against
3 the Comptroller of the Currency (or the Office of the
4 Comptroller of the Currency) with respect to any
5 consumer financial protection function of the Comp-
6 troller of the Currency transferred to the Director
7 by this title before the designated transfer date, ex-
8 cept that the Director shall be substituted for the
9 Comptroller of the Currency (or the Office of the
10 Comptroller of the Currency) as a party to any such
11 proceeding as of the designated transfer date.

12 (f) DIRECTOR OF THE OFFICE OF THRIFT SUPER-
13 VISION.—

14 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
15 TIONS NOT AFFECTED.—Section 4601(a)(3) shall
16 not affect the validity of any right, duty, or obliga-
17 tion of the United States, the Director of the Office
18 of Thrift Supervision, the Office of Thrift Super-
19 vision, or any other person, that—

20 (A) arises under any provision of law relat-
21 ing to any consumer financial protection func-
22 tion of the Director of the Office of Thrift Su-
23 pervision transferred to the Director by this
24 title; and

1 (B) that existed on the day before the des-
2 ignated transfer date.

3 (2) CONTINUATION OF SUITS.—this title shall
4 not abate any proceeding commenced by or against
5 the Director of the Office of Thrift Supervision (or
6 the Office of Thrift Supervision) with respect to any
7 consumer financial protection function of the Direc-
8 tor of the Office of Thrift Supervision transferred to
9 the Director by this title before the designated
10 transfer date, except that the Director shall be sub-
11 stituted for the Director (or the Office of Thrift Su-
12 pervision) as a party to any such proceeding as of
13 the designated transfer date.

14 (g) SECRETARY OF HOUSING AND URBAN DEVELOP-
15 MENT.—

16 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
17 TIONS NOT AFFECTED.—Section 4601(a)(7) shall
18 not affect the validity of any right, duty, or obliga-
19 tion of the United States, the Secretary of Housing
20 and Urban Development, the Department of Hous-
21 ing and Urban Development, or any other person,
22 that—

23 (A) arises under any provision of law relat-
24 ing to any function of the Secretary of Housing
25 and Urban Development under the Real Estate

1 Settlement Procedures Act of 1974 and the Se-
2 cure and Fair Enforcement for Mortgage Li-
3 censing Act of 2008 transferred to the Director
4 by this title; and

5 (B) that existed on the day before the des-
6 ignated transfer date.

7 (2) CONTINUATION OF SUITS.—this title shall
8 not abate any proceeding commenced by or against
9 the Secretary of Housing and Urban Development
10 (or the Department of Housing and Urban Develop-
11 ment) with respect to any consumer financial protec-
12 tion function of the Secretary of Housing and Urban
13 Development transferred to the Director by this title
14 before the designated transfer date, except that the
15 Director shall be substituted for the Secretary of
16 Housing and Urban Development (or such Depart-
17 ment) as a party to any such proceeding as of the
18 designated transfer date.

19 (h) CONTINUATION OF EXISTING ORDERS, REGULA-
20 TIONS, DETERMINATIONS, AGREEMENTS, AND RESOLU-
21 TIONS.—All orders, resolutions, determinations, agree-
22 ments, and regulations that have been issued, made, pre-
23 scribed, or allowed to become effective by the Board of
24 Governors (or any Federal reserve bank), the Federal De-
25 posit Insurance Corporation, the Federal Trade Commis-

1 sion, the National Credit Union Administration, the
2 Comptroller of the Currency, the Director of the Office
3 of Thrift Supervision, the Secretary of Housing and
4 Urban Development, or by a court of competent jurisdic-
5 tion, in the performance of consumer financial protection
6 functions that are transferred by this title and that are
7 in effect on the day before the designated transfer date,
8 shall continue in effect according to the terms of those
9 orders, resolutions, determinations, agreements, and regu-
10 lations, and shall be enforceable by or against the Director
11 until modified, terminated, set aside, or superseded in ac-
12 cordance with applicable law by the Director, by any court
13 of competent jurisdiction, or by operation of law.

14 (i) IDENTIFICATION OF REGULATIONS CONTIN-
15 UED.—Not later than the designated transfer date, the
16 Director—

17 (1) shall, after consultation with the Chairman
18 of the Board of Governors, the Chairperson of the
19 Federal Deposit Insurance Corporation, the Chair-
20 man of the Federal Trade Commission, the Chair-
21 man of the National Credit Union Administration
22 Board, the Comptroller of the Currency, the Direc-
23 tor of the Office of Thrift Supervision, and the Sec-
24 retary of Housing and Urban Development identify

1 the regulations continued under subsection (g) that
2 will be enforced by the Director; and

3 (2) shall publish a list of such regulations in
4 the Federal Register.

5 (j) STATUS OF REGULATIONS PROPOSED OR NOT
6 YET EFFECTIVE.—

7 (1) PROPOSED REGULATIONS.—Any proposed
8 regulation of the Board of Governors, the Federal
9 Deposit Insurance Corporation, the Federal Trade
10 Commission, the National Credit Union Administra-
11 tion, the Comptroller of the Currency, the Director
12 of the Office of Thrift Supervision, or the Secretary
13 of Housing and Urban Development which that
14 agency, in performing consumer financial protection
15 functions transferred by this title, has proposed be-
16 fore the designated transfer date but has not pub-
17 lished as a final regulation before that date, shall be
18 deemed to be a proposed regulation of the Director.

19 (2) REGULATIONS NOT YET EFFECTIVE.—Any
20 interim or final regulation of Board of Governors,
21 the Federal Deposit Insurance Corporation, the Fed-
22 eral Trade Commission, the National Credit Union
23 Administration, the Comptroller of the Currency, the
24 Director of the Office of Thrift Supervision, or the
25 Secretary of Housing and Urban Development which

1 that agency, in performing consumer financial pro-
2 tection functions transferred by this title, has pub-
3 lished before the designated transfer date but which
4 has not become effective before that date, shall take
5 effect as a regulation of the Director according to its
6 terms.

7 **SEC. 4604. TRANSFER OF CERTAIN PERSONNEL.**

8 (a) IN GENERAL.—

9 (1) CERTAIN FEDERAL RESERVE SYSTEM EM-
10 PLOYEES TRANSFERRED.—

11 (A) IDENTIFYING EMPLOYEES FOR TRANS-
12 FER.—The Director and the Board of Gov-
13 ernors shall—

14 (i) jointly determine the number of
15 employees of the Board necessary to per-
16 form or support the consumer financial
17 protection functions of the Board of Gov-
18 ernors that are transferred to the Director
19 by this title; and

20 (ii) consistent with the number deter-
21 mined under clause (i), jointly identify em-
22 ployees of the Board of Governors for
23 transfer to the Agency in a manner that
24 the Director and the Board of Governors,
25 in their sole discretion, deem equitable.

1 (B) IDENTIFIED EMPLOYEES TRANS-
2 FERRED.—All employees of the Board of Gov-
3 ernors identified under subparagraph (A)(ii)
4 shall be transferred to the Agency for employ-
5 ment.

6 (C) FEDERAL RESERVE BANK EMPLOY-
7 EES.—Employees of any Federal reserve bank
8 who, on the day before the designated transfer
9 date, are performing consumer financial protec-
10 tion functions on behalf of the Board of Gov-
11 ernors shall be treated as employees of the
12 Board of Governors for purposes of subpara-
13 graphs (A) and (B).

14 (2) CERTAIN FDIC EMPLOYEES TRANS-
15 FERRED.—

16 (A) IDENTIFYING EMPLOYEES FOR TRANS-
17 FER.—The Director and the Board of Directors
18 of the Federal Deposit Insurance Corporation
19 shall—

20 (i) jointly determine the number of
21 employees of that Corporation necessary to
22 perform or support the consumer financial
23 protection functions of the Corporation
24 that are transferred to the Director by this
25 title; and

1 (ii) consistent with the number deter-
2 mined under clause (i), jointly identify em-
3 ployees of the Corporation for transfer to
4 the Agency in a manner that the Director
5 and the Board of Directors of the Corpora-
6 tion, in their discretion, deem equitable.

7 (B) IDENTIFIED EMPLOYEES TRANS-
8 FERRED.—All employees of the Corporation
9 identified under subparagraph (A)(ii) shall be
10 transferred to the Agency for employment.

11 (3) CERTAIN NCUA EMPLOYEES TRANS-
12 FERRED.—

13 (A) IDENTIFYING EMPLOYEES FOR TRANS-
14 FER.—The Director and the National Credit
15 Union Administration Board shall—

16 (i) jointly determine the number of
17 employees of the National Credit Union
18 Administration necessary to perform or
19 support the consumer financial protection
20 functions of the National Credit Union Ad-
21 ministration that are transferred to the Di-
22 rector by this title; and

23 (ii) consistent with the number deter-
24 mined under clause (i), jointly identify em-
25 ployees of the National Credit Union Ad-

1 ministration for transfer to the Agency in
2 a manner that the Director and the Na-
3 tional Credit Union Administration Board,
4 in their discretion, deem equitable.

5 (B) IDENTIFIED EMPLOYEES TRANS-
6 FERRED.—All employees of the National Credit
7 Union Administration identified under subpara-
8 graph (A)(ii) shall be transferred to the Agency
9 for employment.

10 (4) CERTAIN HUD EMPLOYEES TRANS-
11 FERRED.—

12 (A) IDENTIFYING EMPLOYEES FOR TRANS-
13 FER.—The Director and the Secretary of Hous-
14 ing and Urban Development shall—

15 (i) jointly determine the number of
16 employees of the Department of Housing
17 and Urban Development necessary to per-
18 form or support the consumer financial
19 protection functions of the Secretary of
20 Housing and Urban Development that are
21 transferred to the Director by this title;
22 and

23 (ii) consistent with the number deter-
24 mined under clause (i), jointly identify em-
25 ployees of the Department of Housing and

1 Urban Development for transfer to the
2 Agency in a manner that the Director and
3 the Secretary of Housing and Urban De-
4 velopment, in their discretion, deem equi-
5 table.

6 (B) IDENTIFIED EMPLOYEES TRANS-
7 FERRED.—All employees of the Department of
8 Housing and Urban Development identified
9 under subparagraph (A)(ii) shall be transferred
10 to the Agency for employment.

11 (5) APPOINTMENT AUTHORITY FOR EXCEPTED
12 SERVICE AND SENIOR EXECUTIVE SERVICE TRANS-
13 FERRED.—

14 (A) IN GENERAL.—In the case of employ-
15 ees occupying positions in the excepted service
16 or the Senior Executive Service, any appoint-
17 ment authority established pursuant to law or
18 regulations of the Director of the Office of Per-
19 sonnel Management for filling such positions
20 shall be transferred, subject to subparagraph
21 (B).

22 (B) DECLINING TRANSFERS ALLOWED.—
23 An agency or entity may decline to make a
24 transfer of authority under subparagraph (A)
25 (and the employees appointed pursuant to such

1 subparagraph) to the extent that such authority
2 relates to positions excepted from the competi-
3 tive service because of their confidential, policy-
4 making, policy-determining, or policy-advocating
5 character, and non-career positions in the Sen-
6 ior Executive Service (within the meaning of
7 section 3132(a)(7) of title 5, United States
8 Code).

9 (b) TIMING OF TRANSFERS AND POSITION ASSIGN-
10 MENTS.—Each employee to be transferred under this sec-
11 tion shall—

12 (1) be transferred not later than 90 days after
13 the designated transfer date; and

14 (2) receive notice of such employee's position
15 assignment not later than 120 days after the effec-
16 tive date of the employee's transfer.

17 (c) TRANSFER OF FUNCTION.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, the transfer of employees shall be
20 deemed a transfer of functions for the purpose of
21 section 3503 of title 5, United States Code.

22 (2) PRIORITY OF THIS TITLE.—If any provi-
23 sions of this title conflict with any protection pro-
24 vided to transferred employees under section 3503 of

1 title 5, United States Code, the provisions of this
2 title shall control.

3 (d) EQUAL STATUS AND TENURE POSITIONS.—

4 (1) EMPLOYEES TRANSFERRED FROM FDIC,
5 FTC, HUD, NCUA, OCC, AND OTS.—Each employee
6 transferred from the Federal Deposit Insurance Cor-
7 poration, the Federal Trade Commission, the De-
8 partment of Housing and Urban Development, the
9 National Credit Union Administration, the Office of
10 the Comptroller of the Currency, or the Office of
11 Thrift Supervision shall be placed in a position at
12 the Agency with the same status and tenure as he
13 or she held on the day before the designated transfer
14 date.

15 (2) EMPLOYEES TRANSFERRED FROM THE
16 FEDERAL RESERVE SYSTEM.—

17 (A) COMPARABILITY.—Each employee
18 transferred from the Board of Governors or
19 from a Federal reserve bank shall be placed in
20 a position with the same status and tenure as
21 that of employees transferring to the Agency
22 from the Office of the Comptroller of the Cur-
23 rency who perform similar functions and have
24 similar periods of service.

1 (B) SERVICE PERIODS CREDITED.—For
2 purposes of this paragraph, periods of service
3 with the Board of Governors or a Federal re-
4 serve bank shall be credited as periods of serv-
5 ice with a Federal agency.

6 (e) ADDITIONAL CERTIFICATION REQUIREMENTS
7 LIMITED.—Examiners transferred to the Agency shall not
8 be subject to any additional certification requirements be-
9 fore being placed in a comparable examiner’s position at
10 the Agency examining the same types of institutions as
11 the transferred examiners examined before such examiners
12 were transferred.

13 (f) PERSONNEL ACTIONS LIMITED.—

14 (1) 5-YEAR PROTECTION.—Except as provided
15 in paragraph (2), each transferred employee holding
16 a permanent position on the day before the des-
17 ignated transfer date shall not, during the 5-year pe-
18 riod beginning on the designated transfer date, be
19 involuntarily separated, or involuntarily reassigned
20 outside such transferred employee’s local locality pay
21 area as defined by the Director of the Office of Per-
22 sonnel Management.

23 (2) EXCEPTIONS.—Paragraph (1) shall not be
24 construed as limiting the right of the Director to—

1 (A) separate an employee for cause or for
2 unacceptable performance;

3 (B) terminate an appointment to a position
4 excepted from the competitive service because of
5 its confidential policy-making, policy-deter-
6 mining, or policy-advocating character; or

7 (C) reassign a supervisory employee out-
8 side such employee's locality pay area as de-
9 fined by the Director of the Office of Personnel
10 Management when the Director determines that
11 the reassignment is necessary for the efficient
12 operation of the Agency.

13 (g) PAY.—

14 (1) 1-YEAR PROTECTION.—Except as provided
15 in paragraph (2), each transferred employee shall,
16 during the 1-year period beginning on the des-
17 ignated transfer date, receive pay at a rate not less
18 than the basic rate of pay (including any geographic
19 differential) that the employee received during the 1-
20 year period immediately before the transfer.

21 (2) EXCEPTIONS.—Paragraph (1) shall not be
22 construed as limiting the right of the Agency to re-
23 duce the rate of basic pay of a transferred em-
24 ployee—

25 (A) for cause;

1 (B) for unacceptable performance; or

2 (C) with the employee's consent.

3 (3) PROTECTION ONLY WHILE EMPLOYED.—

4 Paragraph (1) applies to a transferred employee
5 only while that employee remains employed by the
6 Agency.

7 (4) PAY INCREASES PERMITTED.—Paragraph

8 (1) shall not be construed as limiting the authority
9 of the Agency to increase a transferred employee's
10 pay.

11 (h) REORGANIZATION.—

12 (1) BETWEEN 1ST AND 3RD YEAR.—

13 (A) IN GENERAL.—If the Agency deter-
14 mines, during the period beginning 1 year after
15 the designated transfer date and ending 3 years
16 after the designated transfer date, that a reor-
17 ganization of the staff of the Agency is re-
18 quired—

19 (i) that reorganization shall be
20 deemed a “major reorganization” for pur-
21 poses of affording affected employees re-
22 tirement under section 8336(d)(2) or
23 8414(b)(1)(B) of title 5, United States
24 Code;

1 (ii) before the reorganization occurs,
2 all employees in the same locality pay area
3 as defined by the Director of the Office of
4 Personnel Management shall be placed in a
5 uniform position classification system; and

6 (iii) any resulting reduction in force
7 shall be governed by the provisions of
8 chapter 35 of title 5, United States Code,
9 except that the Agency shall—

10 (I) establish competitive areas
11 (as that term is defined in regulations
12 issued by the Director of the Office of
13 Personnel Management) to include at
14 a minimum all employees in the same
15 locality pay area as defined by the Of-
16 fice of Personnel Management;

17 (II) establish competitive levels
18 (as that term is defined in regulations
19 issued by the Director of the Office of
20 Personnel Management) without re-
21 gard to whether the particular em-
22 ployees have been appointed to posi-
23 tions in the competitive service or the
24 excepted service; and

1 (III) afford employees appointed
2 to positions in the excepted service
3 (other than to a position excepted
4 from the competitive service because
5 of its confidential policy-making, pol-
6 icy-determining, or policy-advocating
7 character) the same assignment rights
8 to positions within the Agency as em-
9 ployees appointed to positions in the
10 competitive service.

11 (B) SERVICE CREDIT FOR REDUCTIONS IN
12 FORCE.—For purposes of this paragraph, peri-
13 ods of service with the Board of Governors, a
14 Federal reserve bank, the Federal Deposit In-
15 surance Corporation, the National Credit Union
16 Administration, or the Federal Home Loan
17 Bank Board or any successor to such Board
18 shall be credited as periods of service with a
19 Federal agency.

20 (2) AFTER 3RD YEAR.—

21 (A) IN GENERAL.—If the Agency deter-
22 mines, at any time after the 3-year period be-
23 ginning on the designated transfer date, that a
24 reorganization of the staff of the Agency is re-
25 quired, any resulting reduction in force shall be

1 governed by the provisions of chapter 35 of title
2 5, United States Code, except that the Agency
3 shall establish competitive levels (as that term
4 is defined in regulations issued by the Office of
5 Personnel Management) without regard to
6 types of appointment held by particular employ-
7 ees transferred under this section.

8 (B) SERVICE CREDIT FOR REDUCTIONS IN
9 FORCE.—For purposes of this paragraph, peri-
10 ods of service with the Board of Governors, a
11 Federal reserve bank, the Federal Deposit In-
12 surance Corporation, the National Credit Union
13 Administration, or the Federal Home Loan
14 Bank Board or any successor to such Board
15 shall be credited as periods of service with a
16 Federal agency.

17 (i) BENEFITS.—

18 (1) RETIREMENT BENEFITS FOR TRANSFERRED
19 EMPLOYEES.—

20 (A) IN GENERAL.—

21 (i) CONTINUATION OF EXISTING RE-
22 TIREMENT PLAN.—Except as provided in
23 subparagraph (B), each transferred em-
24 ployee shall remain enrolled in such em-
25 ployee's existing retirement plan as long as

1 the employee remains employed by the
2 Agency.

3 (ii) EMPLOYER'S CONTRIBUTION.—

4 The Director shall pay any employer con-
5 tributions to the existing retirement plan
6 of each transferred employee as required
7 under that plan.

8 (B) OPTION FOR EMPLOYEES TRANS-
9 FERRED FROM FEDERAL RESERVE SYSTEM TO
10 BE SUBJECT TO FEDERAL EMPLOYEE RETIRE-
11 MENT PROGRAM.—

12 (i) ELECTION.—Any transferred em-
13 ployee who was enrolled in a Federal Re-
14 serve System retirement plan on the day
15 before the date of the employee's transfer
16 to the Agency may, during the period be-
17 ginning 6 months after the designated
18 transfer date and ending 1 year after the
19 designated transfer date, elect to be sub-
20 ject to the Federal employee retirement
21 program.

22 (ii) EFFECTIVE DATE OF COV-
23 ERAGE.—For any employee making an
24 election under clause (i), coverage by the
25 Federal employee retirement program shall

1 begin 1 year after the designated transfer
2 date.

3 (C) AGENCY PARTICIPATION IN FEDERAL
4 RESERVE SYSTEM RETIREMENT PLAN.—

5 (i) SEPARATE ACCOUNT IN FEDERAL
6 RESERVE SYSTEM RETIREMENT PLAN ES-
7 TABLISHED.—A separate account in the
8 Federal Reserve System retirement plan
9 shall be established for Agency employees
10 who do not make the election under sub-
11 paragraph (B).

12 (ii) FUNDS ATTRIBUTABLE TO TRANS-
13 FERRED EMPLOYEES REMAINING IN FED-
14 ERAL RESERVE SYSTEM RETIREMENT
15 PLAN TRANSFERRED.—The proportionate
16 share of funds in the Federal Reserve Sys-
17 tem retirement plan, including the propor-
18 tionate share of any funding surplus in
19 that plan, attributable to a transferred em-
20 ployee who does not make the election
21 under subparagraph (B), shall be trans-
22 ferred to the account established under
23 clause (i).

24 (iii) EMPLOYER CONTRIBUTIONS DE-
25 POSITED.—The Director shall deposit into

1 the account established under clause (i)
2 the employer contributions that the Agency
3 makes on behalf of employees who do not
4 make the election under subparagraph (B).

5 (iv) ACCOUNT ADMINISTRATION.—The
6 Director shall administer the account es-
7 tablished under clause (i) as a partici-
8 pating employer in the Federal Reserve
9 System retirement plan.

10 (D) DEFINITIONS.—For purposes of this
11 paragraph, the following definitions shall apply:

12 (i) EXISTING RETIREMENT PLAN.—
13 The term “existing retirement plan”
14 means, with respect to any employee trans-
15 ferred under this section, the particular re-
16 tirement plan (including the Financial In-
17 stitutions Retirement Fund) and any asso-
18 ciated thrift savings plan of the agency or
19 Federal reserve bank from which the em-
20 ployee was transferred, which the employee
21 was enrolled in on the day before the des-
22 ignated transfer date.

23 (ii) FEDERAL EMPLOYEE RETIRE-
24 MENT PLAN.—The term “Federal employee
25 retirement program” means the retirement

1 program for Federal employees established
2 by chapters 83 and 84 of title 5, United
3 States Code.

4 (2) BENEFITS OTHER THAN RETIREMENT BEN-
5 EFITS FOR TRANSFERRED EMPLOYEES.—

6 (A) DURING 1ST YEAR.—

7 (i) EXISTING PLANS CONTINUE.—

8 Each transferred employee may, for 1 year
9 after the designated transfer date, retain
10 membership in any other employee benefit
11 program of the agency or bank from which
12 the employee transferred, including a den-
13 tal, vision, long-term care, or life insurance
14 program, to which the employee belonged
15 on the day before the designated transfer
16 date.

17 (ii) EMPLOYER'S CONTRIBUTION.—

18 The Director shall reimburse the agency or
19 bank from which an employee was trans-
20 ferred for any cost incurred by that agency
21 or bank in continuing to extend coverage
22 in the benefit program to the employee as
23 required under that program or negotiated
24 agreements.

1 (B) DENTAL, VISION, OR LIFE INSURANCE
2 AFTER 1ST YEAR.—If, after the 1-year period
3 beginning on the designated transfer date, the
4 Director decides not to continue participation in
5 any dental, vision, or life insurance program of
6 an agency or bank from which employees trans-
7 ferred, a transferred employee who is a member
8 of such a program may, before the Director’s
9 decision takes effect, elect to enroll, without re-
10 gard to any regularly scheduled open season,
11 in—

12 (i) the enhanced dental benefits estab-
13 lished by chapter 89A of title 5, United
14 States Code;

15 (ii) the enhanced vision benefits estab-
16 lished by chapter 89B of title 5, United
17 States Code; and

18 (iii) the Federal Employees Group
19 Life Insurance Program established by
20 chapter 87 of title 5, United States Code,
21 without regard to any requirement of in-
22 surability.

23 (C) LONG-TERM CARE INSURANCE AFTER
24 1ST YEAR.—If, after the 1-year period begin-
25 ning on the designated transfer date, the Direc-

1 tor decides not to continue participation in any
2 long-term care insurance program of an agency
3 or bank from which employees transferred, a
4 transferred employee who is a member of such
5 a program may, before the Director's decision
6 takes effect, elect to apply for coverage under
7 the Federal Long Term Care Insurance Pro-
8 gram established by chapter 90 of title 5,
9 United States Code, under the underwriting re-
10 quirements applicable to a new active workforce
11 member (as defined in Part 875, title 5, Code
12 of Federal Regulations).

13 (D) EMPLOYEE'S CONTRIBUTION.—An in-
14 dividual enrolled in the Federal Employees
15 Health Benefits program shall pay any em-
16 ployee contribution required by the plan.

17 (E) ADDITIONAL FUNDING.—The Director
18 shall transfer to the Federal Employees Health
19 Benefits Fund established under section 8909
20 of title 5, United States Code, an amount deter-
21 mined by the Director of the Office of Per-
22 sonnel Management, after consultation with the
23 Director and the Director of the Office of Man-
24 agement and Budget, to be necessary to reim-

1 burse the Fund for the cost to the Fund of pro-
2 viding benefits under this subparagraph.

3 (F) CREDIT FOR TIME ENROLLED IN
4 OTHER PLANS.—For employees transferred
5 under this section, enrollment in a health bene-
6 fits plan administered by the Comptroller of the
7 Currency, the Director of the Office of Thrift
8 Supervision, the Federal Deposit Insurance
9 Corporation, the National Credit Union Admin-
10 istration, the Board of Governors, the Secretary
11 of Housing and Urban Development, or a Fed-
12 eral reserve bank, immediately before enroll-
13 ment in a health benefits plan under chapter 89
14 of title 5, United States Code, shall be consid-
15 ered as enrollment in a health benefits plan
16 under that chapter for purposes of section
17 8905(b)(1)(A) of title 5, United States Code.

18 (G) SPECIAL PROVISIONS TO ENSURE CON-
19 TINUATION OF LIFE INSURANCE BENEFITS.—

20 (i) IN GENERAL.—An annuitant (as
21 defined in section 8901(3) of title 5,
22 United States Code) who is enrolled in a
23 life insurance plan administered by the
24 Board of Governors of the Federal Reserve
25 System, the Federal Deposit Insurance

1 Corporation, the Federal Trade Commis-
2 sion, the Secretary of Housing and Urban
3 Development, the National Credit Union
4 Administration, the Comptroller of the
5 Currency, or the Director of the Office of
6 Thrift Supervision on the day before the
7 designated transfer date shall be eligible
8 for coverage by a life insurance plan under
9 sections 8706(b), 8714a, 8714b, and
10 8714c of title 5, United States Code, or in
11 a life insurance plan established by the
12 Agency, without regard to any regularly
13 scheduled open season and requirement of
14 insurability.

15 (ii) EMPLOYEE'S CONTRIBUTION.—An
16 individual enrolled in a life insurance plan
17 under this clause shall pay any employee
18 contribution required by the plan.

19 (iii) ADDITIONAL FUNDING.—The Di-
20 rector shall transfer to the Employees' Life
21 Insurance Fund established under section
22 8714 of title 5, United States Code, an
23 amount determined by the Director of the
24 Office of Personnel Management, after
25 consultation with the Director and the Di-

1 rector of the Office of Management and
2 Budget, to be necessary to reimburse the
3 Fund for the cost to the Fund of providing
4 benefits under this subparagraph not oth-
5 erwise paid for by the employee under
6 clause (ii).

7 (iv) CREDIT FOR TIME ENROLLED IN
8 OTHER PLANS.—For employees transferred
9 under this section, enrollment in a life in-
10 surance plan administered by the Board of
11 Governors, the Federal Deposit Insurance
12 Corporation, the Federal Trade Commis-
13 sion, the Secretary of Housing and Urban
14 Development, the National Credit Union
15 Administration, the Comptroller of the
16 Currency, the Director of the Office of
17 Thrift Supervision, or a Federal reserve
18 bank immediately before enrollment in a
19 life insurance plan under chapter 87 of
20 title 5, United States Code, shall be con-
21 sidered as enrollment in a life insurance
22 plan under that chapter for purposes of
23 section 8706(b)(1)(A) of title 5, United
24 States Code.

1 (j) IMPLEMENTATION OF UNIFORM PAY AND CLASSI-
2 FICATION SYSTEM.—Not later than 2 years after the des-
3 ignated transfer date, the Director shall implement a uni-
4 form pay and classification system for all transferred em-
5 ployees.

6 (k) EQUITABLE TREATMENT.—In administering the
7 provisions of this section, the Director—

8 (1) shall take no action that would unfairly dis-
9 advantage transferred employees relative to each
10 other based on their prior employment by the Board
11 of Governors, the Federal Deposit Insurance Cor-
12 poration, the Federal Trade Commission, the Sec-
13 retary of Housing and Urban Development, the Na-
14 tional Credit Union Administration, the Office of the
15 Comptroller of the Currency, the Office of Thrift
16 Supervision, a Federal reserve bank, the Federal
17 Home Loan Bank Board or any successor to such
18 Board, a Federal home loan bank, or a joint office
19 of the Federal home loan banks; and

20 (2) may take such action as is appropriate in
21 individual cases so that employees transferred under
22 this section receive equitable treatment, with respect
23 to those employees' status, tenure, pay, benefits
24 (other than benefits under programs administered by
25 the Office of Personnel Management), and accrued

1 leave or vacation time, for prior periods of service
2 with any Federal agency, including the Board of
3 Governors of the Federal Reserve System, the Fed-
4 eral Deposit Insurance Corporation, the Federal
5 Trade Commission, the Department of Housing and
6 Urban Development, the National Credit Union Ad-
7 ministration, the Office of the Comptroller of the
8 Currency, the Office of Thrift Supervision, a Federal
9 reserve bank, the Federal Home Loan Bank Board
10 or any successor to such Board, a Federal home
11 loan bank, or a joint office of the Federal home loan
12 banks.

13 (l) IMPLEMENTATION.—In implementing the provi-
14 sions of this section, the Director shall work with the Di-
15 rector of the Office of Personnel Management and other
16 entities with expertise in matters related to employment
17 to ensure a fair and orderly transition for affected employ-
18 ees.

19 **SEC. 4605. INCIDENTAL TRANSFERS.**

20 (a) INCIDENTAL TRANSFERS AUTHORIZED.—The Di-
21 rector of the Office of Management and Budget, in con-
22 sultation with the Secretary, shall make such additional
23 incidental transfers and dispositions of assets and liabil-
24 ities held, used, arising from, available, or to be made
25 available, in connection with the functions transferred by

1 this title, as the Director may determine necessary to ac-
2 complish the purposes of this title.

3 (b) SUNSET.—The authority provided in this section
4 shall terminate 5 years after the date of the enactment
5 of this title.

6 **SEC. 4606. INTERIM AUTHORITY OF THE SECRETARY.**

7 (a) IN GENERAL.—The Secretary is authorized to
8 perform the functions of the Director under this subtitle
9 until the appointment of the Director in accordance with
10 section 4102.

11 (b) INTERIM ADMINISTRATIVE SERVICES BY THE
12 DEPARTMENT OF THE TREASURY.—The Secretary of the
13 Treasury may provide administrative services necessary to
14 support the Agency during the 24-month period beginning
15 on the date of the enactment of this title.

16 (c) INTERIM FUNDING FOR THE DEPARTMENT OF
17 THE TREASURY.—For the purposes of carrying out the
18 authorities granted in this section, there are appropriated
19 to the Secretary of the Treasury such sums as are nec-
20 essary. Notwithstanding any other provision of law, such
21 amounts shall be subject to apportionment under section
22 1517 of title 31, United States Code, and restrictions that
23 generally apply to the use of appropriated funds in title
24 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

3 SEC. 4701. COLLECTION OF DEPOSIT ACCOUNT DATA.

4 (a) PURPOSE.—The purpose of this section is to pro-
5 mote awareness and understanding of the access of indi-
6 viduals and communities to financial services, and to iden-
7 tify business and community development needs and op-
8 portunities.

9 (b) IN GENERAL.—

10 (1) RECORDS REQUIRED.—For each branch,
11 automated teller machine at which deposits are ac-
12 cepted, and other deposit taking service facility with
13 respect to any financial institution, the financial in-
14 stitution shall maintain records of the number and
15 dollar amounts of deposit accounts of customers.

16 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—
17 The customers' addresses maintained pursuant to
18 paragraph (1) shall be geo-coded so that data shall
19 be collected regarding the census tracts of the resi-
20 dence or business location of the customers.

21 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
22 maintaining records on any deposit account under
23 this section, the financial institution shall also
24 record whether the deposit account is for a residen-
25 tial or commercial customer.

1 (4) PUBLIC AVAILABILITY.—

2 (A) IN GENERAL.—The following informa-
3 tion shall be publicly available on an annual
4 basis—

5 (i) the address and census tracts of
6 each branch, automated teller machine at
7 which deposits are accepted, and other de-
8 posit taking service facility with respect to
9 any financial institution;

10 (ii) the type of deposit account includ-
11 ing whether the account was a checking or
12 savings account;

13 (iii) data on the number and dollar
14 amounts of the accounts, presented by cen-
15 sus tract location of the residential and
16 commercial customers; and

17 (iv) any other data deemed appro-
18 priate by the Director.

19 (B) PROTECTION OF IDENTITY.—In the
20 publicly available data, any personally identifi-
21 able data element shall be removed so as to pro-
22 tect the identities of the commercial and resi-
23 dential customers.

24 (c) AVAILABILITY OF INFORMATION.—

1 (1) SUBMISSION TO AGENCIES.—The data re-
2 quired to be compiled and maintained under this
3 section by any financial institution shall be sub-
4 mitted annually to the Agency, or to a Federal bank-
5 ing agency, in accordance with regulations pre-
6 scribed by the Director.

7 (2) AVAILABILITY OF INFORMATION.—Informa-
8 tion compiled and maintained under this section
9 shall be retained for not less than 3 years after the
10 date of preparation and shall be made available to
11 the public, upon request, in the form required under
12 regulations prescribed by the Director.

13 (d) AGENCY USE.—The Director—

14 (1) shall assess the distribution of residential
15 and commercial accounts at such financial institu-
16 tion across income and minority level of census
17 tracts; and

18 (2) may use the data for any other purpose as
19 permitted by law.

20 (e) REGULATIONS AND GUIDANCE.—

21 (1) IN GENERAL.—The Director shall prescribe
22 such regulations and issue guidance as may be nec-
23 essary to carry out, enforce, and compile data pursu-
24 ant to this section.

1 (2) DATA COMPILATION REGULATIONS.—The
2 Director shall prescribe regulations regarding the
3 provision of data compiled under this section to the
4 Federal banking agencies to carry out the purposes
5 of this section and shall issue guidance to financial
6 institutions regarding measures to facilitate compli-
7 ance with the this section and the requirements of
8 regulations prescribed under this section.

9 (f) DEFINITIONS.—For purposes of this section, the
10 following definitions shall apply:

11 (1) AGENCY.—The term “Agency” means the
12 Consumer Financial Protection Agency.

13 (2) CREDIT UNION.—The term “credit union”
14 means a Federal credit union or a State-chartered
15 credit union (as such terms are defined in section
16 101 of the Federal Credit Union Act).

17 (3) DEPOSIT ACCOUNT.—The term “deposit ac-
18 count” includes any checking account, savings ac-
19 count, credit union share account, and other type of
20 account as defined by the Director.

21 (4) DIRECTOR.—The term “Director” means
22 the Director of the Agency.

23 (5) FEDERAL BANKING AGENCY.—The term
24 “Federal banking agency” means the Board of Gov-
25 ernors of the Federal Reserve System, the head of

1 the agency responsible for chartering and regulating
 2 national banks, the Director of the Office of Thrift
 3 Supervision, the Federal Deposit Insurance Corpora-
 4 tion, and the National Credit Union Administration;
 5 and the term “Federal banking agencies” means all
 6 of those agencies.

7 (6) FINANCIAL INSTITUTION.—The term “fi-
 8 nancial institution”—

9 (A) has the meaning given to the term “in-
 10 sured depository institution” in section 3(c)(2)
 11 of the Federal Deposit Insurance Act; and

12 (B) includes any credit union.

13 (g) EFFECTIVE DATE.—This section shall take effect
 14 on the designated transfer date.

15 **SEC. 4702. SMALL BUSINESS DATA COLLECTION.**

16 (a) IN GENERAL.—The Equal Credit Opportunity
 17 Act (15 U.S.C. 1691 et seq.) is amended by inserting after
 18 section 704A the following new section:

19 **“§ 704B. Small business loan data collection**

20 “(a) PURPOSE.—The purpose of this section is to fa-
 21 cilitate enforcement of fair lending laws and enable com-
 22 munities, governmental entities, and creditors to identify
 23 business and community development needs and opportu-
 24 nities of women- and minority-owned small businesses.

1 “(b) IN GENERAL.—Subject to the requirements of
2 this section, in the case of any application to a financial
3 institution for credit for a small business, the financial in-
4 stitution shall—

5 “(1) inquire whether the business is a women-
6 or minority-owned business, without regard to
7 whether such application is received in person, by
8 mail, by telephone, by electronic mail or other form
9 of electronic transmission, or by any other means
10 and whether or not such application is in response
11 to a solicitation by the financial institution; and

12 “(2) maintain a record of the responses to such
13 inquiry separate from the application and accom-
14 panying information.

15 “(c) RIGHT TO REFUSE.—Any applicant for credit
16 may refuse to provide any information requested pursuant
17 to subsection (b) in connection with any application for
18 credit.

19 “(d) NO ACCESS BY UNDERWRITERS.—

20 “(1) IN GENERAL.—Where feasible, no loan un-
21 derwriter or other officer or employee of a financial
22 institution, or any affiliate of a financial institution,
23 involved in making any determination concerning an
24 application for credit shall have access to any infor-
25 mation provided by the applicant pursuant to a re-

1 quest under subsection (b) in connection with such
2 application.

3 “(2) EXCEPTION.—If a financial institution de-
4 termines that loan underwriter or other officer or
5 employee of a financial institution, or any affiliate of
6 a financial institution, involved in making any deter-
7 mination concerning an application for credit should
8 have access to any information provided by the ap-
9 plicant pursuant to a request under subsection (b),
10 the financial institution will provide notice to the ap-
11 plicant of the access of the underwriter to this infor-
12 mation, along with notice that the financial institu-
13 tion may not discriminate on this basis of this infor-
14 mation.

15 “(e) FORM AND MANNER OF INFORMATION.—

16 “(1) IN GENERAL.—Each financial institution
17 shall compile and maintain, in accordance with regu-
18 lations of the Agency, a record of the information
19 provided by any loan applicant pursuant to a request
20 under subsection (b).

21 “(2) ITEMIZATION.—Information compiled and
22 maintained under paragraph (1) shall also be
23 itemized in order to clearly and conspicuously dis-
24 close the following:

1 “(A) The number of the application and
2 the date the application was received.

3 “(B) The type and purpose of the loan or
4 other credit being applied for.

5 “(C) The amount of the credit or credit
6 limit applied for and the amount of the credit
7 transaction or the credit limit approved for such
8 applicant.

9 “(D) The type of action taken with respect
10 to such application and the date of such action.

11 “(E) The census tract in which is located
12 the principal place of business of the small busi-
13 ness loan applicant.

14 “(F) The gross annual revenue of the busi-
15 ness in the last fiscal year of the small business
16 loan applicant preceding the date of the appli-
17 cation.

18 “(G) The race, sex, and ethnicity of the
19 principal owners of the business.

20 “(H) Any additional data the Agency de-
21 termines would aid in fulfilling the purposes of
22 this section.

23 “(3) INCLUSION OF PERSONALLY IDENTIFIABLE
24 INFORMATION PROHIBITED.—In compiling and
25 maintaining any record of information under this

1 section, a financial institution may not include in
2 such record the name, specific address (other than
3 the census tract required under paragraph (1)(E)),
4 telephone number, electronic mail address, and any
5 other personally identifiable information concerning
6 any individual who is, or is connected with, the small
7 business loan applicant.

8 “(4) DISCRETION TO DELETE OR MODIFY PUB-
9 LICLY AVAILABLE DATA.—The Agency may, in the
10 discretion of the Agency, delete or modify data col-
11 lected under this section which is or will be available
12 to the public if the Agency determines that the dele-
13 tion or modification of the data would advance a
14 compelling privacy interest.

15 “(f) AVAILABILITY OF INFORMATION.—

16 “(1) SUBMISSION TO AGENCY.—The data re-
17 quired to be compiled and maintained under this
18 section by any financial institution shall be sub-
19 mitted annually to the Agency.

20 “(2) AVAILABILITY OF INFORMATION.—

21 “(A) IN GENERAL.—Information compiled
22 and maintained under this section shall be re-
23 tained for not less than 3 years after the date
24 of preparation and shall be made available to

1 the public, upon request, in the form required
2 under regulations prescribed by the Agency.

3 “(B) ANNUAL DISCLOSURE TO THE PUB-
4 LIC.—In addition to the availability by request
5 under subparagraph (A) of data compiled and
6 maintained under this section, the Agency shall
7 annually provide such data to the public.

8 “(C) PROCEDURES.—The procedures for
9 disclosing data compiled and maintained under
10 this section to the public shall be determined by
11 the Agency by regulation.

12 “(3) COMPILATION OF AGGREGATE DATA.—

13 “(A) IN GENERAL.—The Agency may, in
14 the discretion of the Agency, compile for the
15 Agency’s own use compilations of aggregate
16 data.

17 “(B) PUBLIC AVAILABILITY OF AGGRE-
18 GATE DATA.—The Agency may, in the discre-
19 tion of the Agency, make public compilations of
20 aggregate data in such manner as the Agency
21 may determine to be appropriate.

22 “(g) DEFINITIONS.—For purposes of this section, the
23 following definitions shall apply:

24 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
25 nancial institution’ means any partnership, com-

pany, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

“(2) MINORITY-OWNED BUSINESS.—The term ‘minority-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

“(3) WOMEN-OWNED BUSINESS.—The term ‘women-owned business’ means a business—

“(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

“(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

“(4) MINORITY.—The term ‘minority’ has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“(5) SMALL BUSINESS LOAN.—The term ‘small business loan’ shall be defined by the Agency, which may take into account—

1 “(A) the gross revenues of the borrower;

2 “(B) the total number of employees of the
3 borrower;

4 “(C) the industry in which the borrower
5 has its primary operations; and

6 “(D) the size of the loan.

7 “(h) AGENCY ACTION.—

8 “(1) IN GENERAL.—The Agency shall prescribe
9 such regulations and issue such guidance as may be
10 necessary to carry out, enforce, and compile data
11 pursuant to this section.

12 “(2) EXCEPTIONS.—The Agency, by regulation
13 or order, may adopt exceptions to any requirement
14 of this section and may, conditionally or uncondi-
15 tionally, exempt any financial institution or class of
16 institutions from the requirements of this section as
17 the Agency determines to be necessary or appro-
18 priate to carry out the purposes and objectives of
19 this section.

20 “(3) GUIDANCE.—The Agency shall issue guid-
21 ance designed to facilitate compliance with the re-
22 quirements of this section, including assisting finan-
23 cial institutions in working with applicants to deter-
24 mine whether the applicants are women- or minor-
25 ity-owned for the purposes of this section.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—
2 Section 701(b) of the Equal Credit Opportunity Act (15
3 U.S.C. 1691(b)) is amended—

4 (1) by striking “or” after the semicolon at the
5 end of paragraph (3);

6 (2) by striking the period at the end of para-
7 graph (4) and inserting “; or”; and

8 (3) by inserting after paragraph (4), the fol-
9 lowing new paragraph:

10 “(5) to make an inquiry under section 704B in
11 accordance with the requirements of such section.”.

12 (c) CLERICAL AMENDMENT.—The table of sections
13 for the Equal Credit Opportunity Act is amended by in-
14 serting after the item relating to section 704A the fol-
15 lowing new item:

“704B. Small business loan data collection.”.

16 (d) EFFECTIVE DATE.—This section shall take effect
17 on the designated transfer date.

18 **SEC. 4703. ANNUAL FINANCIAL AUTOPSY.**

19 (a) STUDY REQUIRED.—Not later than March 31 of
20 each calendar year, the Director shall—

21 (1) conduct a scientific sampling of foreclosures
22 and bankruptcies during the previous calendar year
23 in each State or territory of the United States; and

24 (2) identify any underlying causes of such
25 bankruptcies or foreclosures, including any specific

1 financial products or services that have been the
2 cause of substantial numbers of such bankruptcies
3 or foreclosures.

4 (b) REPORT.—After the completion of each study re-
5 quired under subsection (a), the Director shall submit a
6 report to the Congress containing—

7 (1) any conclusions made by the Director in
8 carrying out such study;

9 (2) any specific financial products or services
10 that the Director has identified to have caused a
11 substantial number of bankruptcies or foreclosures,
12 as well as which companies or individuals provided
13 such financial products or services; and

14 (3) any recommendations the Director has for
15 legislation that would reduce the underlying causes
16 of bankruptcies and foreclosures identified in such
17 study.

18 **SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.**

19 (a) IN GENERAL.—Section 104(a) of the Helping
20 Families Save Their Homes Act of 2009 (division A of
21 Public Law 111–22) is amended—

22 (1) in paragraph (2), by striking “resulting”
23 and inserting “in each State that result”;

24 (2) in paragraph (3), by inserting “each State
25 for” after “modifications in”; and

1 (3) in paragraph (4), by inserting “in each
2 State” after “total number of loans”.

3 (b) CONFORMING AMENDMENT.—Section
4 104(b)(1)(A) of such Act is amended by adding at the end
5 the following sentence: “Not later than 60 days after the
6 date of the enactment of the Wall Street Reform and Con-
7 sumer Protection Act of 2009, the Comptroller of the Cur-
8 rency and the Director of the Office of Thrift Supervision
9 shall update such requirements to reflect amendments
10 made to this section by such Act.”.

11 **Subtitle H—Conforming** 12 **Amendments**

13 **SEC. 4801. AMENDMENTS TO THE INSPECTOR GENERAL** 14 **ACT OF 1978.**

15 (a) ESTABLISHMENT.—Section 8G(a)(2) of the In-
16 spector General Act of 1978 (5 U.S.C. App.) is amended
17 by inserting “the Consumer Financial Protection Agency,”
18 before “the Consumer Product Safety Commission,”.

19 (b) EFFECTIVE DATE.—This section shall take effect
20 on the date of the enactment of this title.

21 **SEC. 4802. AMENDMENTS TO THE PRIVACY ACT OF 1974.**

22 (a) APPLICABILITY.—Section 552a of title 5, United
23 States Code, is amended by adding at the end the fol-
24 lowing new subsection:

1 “(w) APPLICABILITY TO CONSUMER FINANCIAL PRO-
 2 TECTION AGENCY.—Except as provided in the Consumer
 3 Financial Protection Agency Act of 2009, this section
 4 shall apply with respect to the Consumer Financial Protec-
 5 tion Agency.”.

6 (b) EFFECTIVE DATE.—This section shall take effect
 7 on the date of the enactment of this title.

8 **SEC. 4803. AMENDMENTS TO THE ALTERNATIVE MORT-**
 9 **GAGE TRANSACTION PARITY ACT OF 1982.**

10 (a) SECTION 803(1).—Section 803(1) of the Alter-
 11 native Mortgage Transaction Parity Act of 1982 (12
 12 U.S.C. 3802(1)) is amended by striking paragraphs (B)
 13 and (C).

14 (b) SECTION 804(a).—Section 804(a) of the Alter-
 15 native Mortgage Transaction Parity Act of 1982 (12
 16 U.S.C. 3803(a)) is amended—

17 (1) in paragraphs (1), (2), and (3), by inserting
 18 “on or before the designated transfer date, as deter-
 19 mined in section 4602 of the Consumer Financial
 20 Protection Agency Act of 2009” after “transactions
 21 made” each place such term appears;

22 (2) in paragraph (2), by striking “and” at the
 23 end;

24 (3) in paragraph (3), by striking the period at
 25 the end and inserting “; and”; and

1 (4) by adding at the end the following new
2 paragraph:

3 “(4) with respect to transactions made after the
4 designated transfer date, as determined in section
5 4602 of the Consumer Financial Protection Agency
6 Act of 2009, only in accordance with regulations
7 governing alternative mortgage transactions as
8 issued by the Consumer Financial Protection Agency
9 for federally chartered housing creditors, in accord-
10 ance with the rulemaking authority granted to the
11 Consumer Financial Protection Agency with regard
12 to federally chartered housing creditors under laws
13 other than this section.”.

14 (c) SECTION 804.—Section 804 of the Alternative
15 Mortgage Transaction Parity Act of 1982 (12 U.S.C.
16 3803) is amended—

17 (1) by striking subsection (c) and inserting the
18 following new subsection:

19 “(c) EFFECT OF STATE LAW.—

20 “(1) IN GENERAL.—An alternative mortgage
21 transaction may be made by a housing creditor in
22 accordance with this section, notwithstanding any
23 State Constitution, law, or regulation that prohibits
24 an alternative mortgage transaction.

1 “(2) RULE OF CONSTRUCTION.—For purposes
2 of this subsection, a State Constitution, law, or reg-
3 ulation that prohibits an alternative mortgage trans-
4 action does not include any State Constitution, law,
5 or regulation that regulates mortgage transactions
6 generally, including any restriction on prepayment
7 penalties or late charges.”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(d) DUTIES OF CONSUMER FINANCIAL PROTECTION
11 AGENCY.—The Consumer Financial Protection Agency
12 shall—

13 “(1) review the regulations identified by the
14 Comptroller of the Currency, the National Credit
15 Union Administration, and the Director of the Office
16 of Thrift Supervision (as those regulations exist on
17 the designated transfer date, as determined in sec-
18 tion 4602 of the Consumer Financial Protection
19 Agency Act of 2009) as applicable under paragraphs
20 (1), (2), and (3) of subsection (a);

21 “(2) determine whether such regulations are
22 fair and not deceptive and otherwise meet the objec-
23 tives of section 4201 of the Consumer Financial
24 Protection Agency Act of 2009; and

1 “(3) prescribe regulations under subsection
 2 (a)(4) after the designated transfer date, as deter-
 3 mined under such Act.”.

4 (d) EFFECTIVE DATE AND SCOPE OF APPLICA-
 5 TION.—

6 (1) EFFECTIVE DATE.—This section shall take
 7 effect on the designated transfer date.

8 (2) SCOPE OF APPLICATION.—The amendments
 9 made by subsection (a) shall not affect any trans-
 10 action covered by the Alternative Mortgage Trans-
 11 action Parity Act of 1982 which is entered into on
 12 or before the designated transfer date.

13 **SEC. 4804. AMENDMENTS TO THE CONSUMER CREDIT PRO-**
 14 **TECTION ACT.**

15 (a) TRUTH IN LENDING ACT.—

16 (1) SECTION 103.—Section 103 of the Truth in
 17 Lending Act (15 U.S.C. 1602) is amended by strik-
 18 ing subsection (b) and inserting the following new
 19 subsection:

20 “(b) AGENCY DEFINITIONS.—

21 “(1) BOARD.—The term ‘Board’ means the
 22 ‘Board of Governors of the Federal Reserve System’.

23 “(2) AGENCY.—The term ‘Agency’ means the
 24 Consumer Financial Protection Agency.”.

1 (2) UNIVERSAL AMENDMENT RELATING TO
2 BOARD OF GOVERNORS OF THE FEDERAL RESERVE
3 SYSTEM.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), the Truth in Lending Act
6 (15 U.S.C. 1601 et seq.) is amended by striking
7 “Board” each place such term appears, includ-
8 ing in chapters 4 and 5 relating to credit billing
9 and consumer leases, and inserting “Agency”.

10 (B) EXCEPTIONS.—The amendment de-
11 scribed in subparagraph (A) shall not apply to
12 sections 108(a) (as amended by paragraph (4))
13 and 140(d) and shall not apply to the term
14 “Board” when used in reference to the Federal
15 Deposit Insurance Corporation or the National
16 Credit Union Administration.

17 (3) SECTION 105.—Section 105(b) of the Truth
18 in Lending Act (15 U.S.C. 1604(b)) is amended by
19 striking the first sentence and inserting the fol-
20 lowing: “The Agency shall publish a single, inte-
21 grated disclosure for mortgage loan transactions, in-
22 cluding real estate settlement cost statements, which
23 include the disclosure requirements of this title, in
24 conjunction with the disclosure requirements of the
25 Real Estate Settlement Procedures Act that, taken

1 together, may apply to transactions subject to both
2 or either law. The purpose of such model disclosure
3 shall be to facilitate compliance with the disclosure
4 requirements of those titles, and to aid the borrower
5 or lessee in understanding the transaction by uti-
6 lizing readily understandable language to simplify
7 the technical nature of the disclosures.”.

8 (4) SECTION 108.—Section 108 of the Truth in
9 Lending Act (15 U.S.C. 1607) is amended—

10 (A) by striking subsection (a) and insert-
11 ing the following new subsection:

12 “(a) ENFORCING AGENCIES.—Subject to section
13 4202 of the Consumer Financial Protection Agency Act
14 of 2009, compliance with the requirements imposed under
15 this title shall be enforced as follows:

16 “(1) Under section 8 of the Federal Deposit In-
17 surance Act, in the case of—

18 “(A) national banks, and Federal branches
19 and Federal agencies of foreign banks, by the
20 head of the agency responsible for chartering
21 and regulating national banks;

22 “(B) member banks of the Federal Reserve
23 System (other than national banks), branches
24 and agencies of foreign banks (other than Fed-
25 eral branches, Federal agencies, and insured

1 State branches of foreign banks), commercial
2 lending companies owned or controlled by for-
3 eign banks, and organizations operating under
4 section 25 or 25A of the Federal Reserve Act,
5 by the Board;

6 “(C) depository institution insured by the
7 Federal Deposit Insurance Corporation (other
8 than members of the Federal Reserve System,
9 Federal savings associations, and savings and
10 loan holding companies) and insured State
11 branches of foreign banks, by the Board of Di-
12 rectors of the Federal Deposit Insurance Cor-
13 poration; and

14 “(D) Federal savings associations and sav-
15 ings and loan holding companies, by the Direc-
16 tor of the Office of Thrift Supervision.

17 “(2) Under subtitle E of the Consumer Finan-
18 cial Protection Agency Act of 2009, by the Agency.

19 “(3) Under the Federal Credit Union Act, by
20 the head of the agency responsible for chartering
21 and regulating Federal credit unions.

22 “(4) Under the Federal Aviation Act of 1958,
23 by the Secretary of Transportation with respect to
24 any air carrier or foreign air carrier subject to that
25 Act.

1 “(5) Under the Packers and Stockyards Act,
2 1921 (except as provided in section 406 of that Act),
3 by the Secretary of Agriculture with respect to any
4 activities subject to that Act.

5 “(6) Under the Farm Credit Act of 1971, by
6 the Farm Credit Administration with respect to any
7 Federal land bank, Federal land bank association,
8 Federal intermediate credit bank, or production
9 credit association.”; and

10 (B) by striking subsection (c) and insert-
11 ing the following new subsection:

12 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
13 FEDERAL TRADE COMMISSION.—Except to the extent
14 that enforcement of the requirements imposed under this
15 title is specifically committed to some other Government
16 agency (other than the Consumer Financial Protection
17 Agency) under subsection (a) and subject to section 4202
18 of the Consumer Financial Protection Agency Act of 2009,
19 the Federal Trade Commission shall enforce such require-
20 ments. For the purpose of the exercise by the Federal
21 Trade Commission of its functions and powers under the
22 Federal Trade Commission Act, a violation of any require-
23 ment imposed under this title shall be deemed a violation
24 of a requirement imposed under that Act. All of the func-
25 tions and powers of the Federal Trade Commission under

1 the Federal Trade Commission Act are available to the
2 Commission to enforce compliance by any person with the
3 requirements under this title, irrespective of whether that
4 person is engaged in commerce or meets any other juris-
5 dictional tests in the Federal Trade Commission Act.”.

6 (5) UNIVERSAL AMENDMENT RELATING TO THE
7 FEDERAL TRADE COMMISSION.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B) (and except for any insertion
10 of “Federal Trade Commission” made by this
11 subtitle), the Truth in Lending Act (15 U.S.C.
12 1601 et seq.) is amended by striking “Federal
13 Trade Commission” each place such term ap-
14 pears and inserting “Agency”.

15 (B) EXCEPTIONS.—The amendment de-
16 scribed in subparagraph (A) shall not apply to
17 sections 108(c) (as amended by paragraph (4))
18 129(m) (as amended by paragraph (7)), 140A,
19 or 149 (as amended by paragraph (8)).

20 (6) SECTION 127.—Subparagraph (C) of section
21 127(b)(11) of the Truth in Lending Act (15 U.S.C.
22 1637(b)(11)) is amended to read as follows:

23 “(C) Notwithstanding subparagraphs (A)
24 and (B), in the case of a creditor with respect
25 to which compliance with this title is enforced

1 by the Agency, the following statement, in a
 2 prominent location on the front of the billing
 3 statement, disclosed clearly and conspicuously:
 4 ‘Minimum Payment Warning: Making only the
 5 required minimum payment will increase the in-
 6 terest you pay and the time it takes to repay
 7 your balance. For example, making only the
 8 typical 5 percent minimum monthly payment on
 9 a balance of \$300 at an interest rate of 17 per-
 10 cent would take 24 months to repay the balance
 11 in full. For an estimate of the time it would
 12 take to repay your balance, making only min-
 13 imum monthly payments, call the Consumer Fi-
 14 nancial Protection Agency at this toll-free num-
 15 ber: _____ [the blank space to
 16 be filled in by the creditor].’ A creditor who is
 17 subject to this subparagraph shall not be sub-
 18 ject to subparagraph (A) or (B).’.

19 (7) SECTION 129.—Section 129(m) of the Truth
 20 in Lending Act (15 U.S.C. 1639(m)) is amended to
 21 read as follows:

22 “(m) CIVIL PENALTIES IN FEDERAL TRADE COM-
 23 MISSION ENFORCEMENT ACTIONS.—For purposes of en-
 24 forcement by the Federal Trade Commission, any violation
 25 of a regulation issued by the Agency pursuant to sub-

1 section (l)(2) of this section shall be treated as a violation
2 of a regulation promulgated under section 18 of the Fed-
3 eral Trade Commission Act (15 U.S.C. 57a) regarding un-
4 fair or deceptive acts or practices.”.

5 (8) SECTION 149.—Section 149(b) of the Truth
6 in Lending Act (15 U.S.C. 1665d(b)) is amended by
7 inserting “the Federal Trade Commission,” after “in
8 consultation with”.

9 (b) FAIR CREDIT REPORTING ACT.—

10 (1) SECTION 603.—Section 603 of the Fair
11 Credit Reporting Act (15 U.S.C. 1681a) is amend-
12 ed—

13 (A) by redesignating subsections (w) and
14 (x) as subsections (x) and (y), respectively; and

15 (B) by inserting after subsection (v) the
16 following new subsection:

17 “(w) AGENCY.—The term ‘Agency’ means the Con-
18 sumer Financial Protection Agency.”.

19 (2) UNIVERSAL AMENDMENTS RELATING TO
20 THE FEDERAL TRADE COMMISSION.—Other than in
21 connection with the amendment made by paragraphs
22 (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection
23 (and except for any insertion of “Federal Trade
24 Commission” made by this subtitle), the Fair Credit
25 Reporting Act (15 U.S.C. 1681a) is amended—

1 (A) by striking “Federal Trade Commis-
2 sion” each place such term appears and insert-
3 ing “Agency”;

4 (B) by striking “Commission” each place
5 such term appears (other than in connection
6 with the term amended in subparagraph (A))
7 and inserting “Agency”; and

8 (C) by striking “Federal banking agencies,
9 the National Credit Union Administration, and
10 the Commission shall jointly” each place such
11 term appears in sections 605(h)(2) and
12 623(a)(8)(A) and inserting “Agency shall”.

13 (3) SECTION 603.—Section 603(k)(2) of the
14 Fair Credit Reporting Act (15 U.S.C. 1681a(k)(2))
15 is amended by striking “Board of Governors of the
16 Federal Reserve System” and inserting “Agency”.

17 (4) SECTION 604.—Subsection 604(g) of the
18 Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is
19 amended—

20 (A) by striking subparagraph (C) of para-
21 graph (3) and inserting the following new sub-
22 paragraph:

23 “(C) as otherwise determined to be nec-
24 essary and appropriate, by regulation or order
25 and subject to paragraph (6), by the Agency

1 (with respect to any covered person subject to
2 the jurisdiction of such agency under paragraph
3 (2) of section 621(b)), or the applicable State
4 insurance authority (with respect to any person
5 engaged in providing insurance or annuities).”;
6 and

7 (B) by striking paragraph (5) and insert-
8 ing the following new paragraph:

9 “(5) REGULATIONS REQUIRED.—The Agency
10 may, after notice and opportunity for comment, pre-
11 scribe regulations that permit transactions under
12 paragraph (2) that are determined to be necessary
13 and appropriate to protect legitimate operational,
14 transactional, risk, consumer, and other needs (and
15 which shall include permitting actions necessary for
16 administrative verification purposes), consistent with
17 the intent of paragraph (2) to restrict the use of
18 medical information for inappropriate purposes.”.

19 (5) SECTION 609.—Section 609(d)(1) of the
20 Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1))
21 is amended by inserting “the Federal Trade Com-
22 mission,” after “in consultation with”.

23 (6) SECTION 611.—Section 611(e) of the Fair
24 Credit Reporting Act (15 U.S.C. 1681i(e)) is
25 amended—

1 (A) by amending paragraph (2) to read as
2 follows:

3 “(2) EXCLUSION.—Complaints received or ob-
4 tained by the Agency pursuant to its investigative
5 authority under the Consumer Financial Protection
6 Agency Act of 2009 shall not be subject to para-
7 graph (1).”; and

8 (B) in the heading of paragraph (3) by in-
9 serting “CONSUMER REPORTING” before
10 “AGENCY”.

11 (7) SECTION 615.—Section 615 of the Fair
12 Credit Reporting Act (15 U.S.C. 1681m) is amend-
13 ed—

14 (A) in subsection (d)(2)(B), by inserting
15 “the Federal Trade Commission,” after “in
16 consultation with”;

17 (B) in subsection (e)(1), by striking “and
18 the Commission” and inserting “the Federal
19 Trade Commission, the Securities and Ex-
20 change Commission, and the Commodities Fu-
21 tures Trading Commission”; and

22 (C) by striking subparagraph (A) of sub-
23 section (h)(6) and inserting the following:

24 “(A) RULES REQUIRED.—The Agency
25 shall prescribe rules.”.

1 (8) SECTION 621.—Section 621 of the Fair
2 Credit Reporting Act (15 U.S.C. 1681s) is amend-
3 ed—

4 (A) by striking subsection (a) and insert-
5 ing the following new subsection:

6 “(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
7 SION.—

8 “(1) IN GENERAL.—Subject to section 4202 of
9 the Consumer Financial Protection Agency Act of
10 2009, compliance with the requirements imposed
11 under this title shall be enforced under the Federal
12 Trade Commission Act by the Federal Trade Com-
13 mission with respect to consumer reporting agencies
14 and all other persons subject thereto, except to the
15 extent that enforcement of the requirements imposed
16 under this title is specifically committed to some
17 other government agency (other than the Consumer
18 Financial Protection Agency) under subsection (b)
19 hereof. For the purpose of the exercise by the Fed-
20 eral Trade Commission of its functions and powers
21 under the Federal Trade Commission Act, a viola-
22 tion of any requirement or prohibition imposed
23 under this title shall constitute an unfair or decep-
24 tive act or practice in commerce in violation of sec-
25 tion 5(a) of the Federal Trade Commission Act and

1 shall be subject to enforcement by the Federal Trade
2 Commission under section 5(b) of such Act with re-
3 spect to any consumer reporting agency or person
4 subject to enforcement by the Federal Trade Com-
5 mission pursuant to this subsection, irrespective of
6 whether that person is engaged in commerce or
7 meets any other jurisdictional tests in the Federal
8 Trade Commission Act. The Federal Trade Commis-
9 sion shall have such procedural, investigative, and
10 enforcement powers (subject to section 4202 of the
11 Consumer Financial Protection Agency Act of
12 2009), including the power to issue procedural rules
13 in enforcing compliance with the requirements im-
14 posed under this title and to require the filing of re-
15 ports, the production of documents, and the appear-
16 ance of witnesses as though the applicable terms and
17 conditions of the Federal Trade Commission Act
18 were part of this title. Any person violating any of
19 the provisions of this title shall be subject to the
20 penalties and entitled to the privileges and immuni-
21 ties provided in the Federal Trade Commission Act
22 as though the applicable terms and provisions there-
23 of were part of this title.

24 “(2) CIVIL MONEY PENALTIES.—

1 “(A) IN GENERAL.—Subject to section
2 4202 of the Consumer Financial Protection
3 Agency Act of 2009, in the event of a knowing
4 violation, which constitutes a pattern or prac-
5 tice of violations of this title, the Commission
6 may commence a civil action to recover a civil
7 penalty in a district court of the United States
8 against any person that violates this title. In
9 such action, such person shall be liable for a
10 civil penalty of not more than \$2,500 per viola-
11 tion.

12 “(B) FACTORS IN DETERMINING
13 AMOUNT.—In determining the amount of a civil
14 penalty under subparagraph (A), the court shall
15 take into account the degree of culpability, any
16 history of prior such conduct, ability to pay, ef-
17 fect on ability to continue to do business, and
18 such other matters as justice may require.

19 “(3) EXCEPTION.—Notwithstanding paragraph
20 (2), a court may not impose any civil penalty on a
21 person for a violation of section 623(a)(1) unless the
22 person has been enjoined from committing the viola-
23 tion, or ordered not to commit the violation, in an
24 action or proceeding brought by or on behalf of the
25 Federal Trade Commission or the Agency, as the

1 case may be, and has violated the injunction or
2 order, and the court may not impose any civil pen-
3 alty for any violation occurring before the date of
4 the violation of the injunction or order.”;

5 (B) by striking subsection (b) and insert-
6 ing the following new subsection:

7 “(b) ENFORCEMENT BY OTHER AGENCIES.—Subject
8 to section 4202 of the Consumer Financial Protection
9 Agency Act of 2009, compliance with the requirements im-
10 posed under this title with respect to consumer reporting
11 agencies, persons who use consumer reports from such
12 agencies, persons who furnish information to such agen-
13 cies, and users of information that are subject to sub-
14 section (d) of section 615 shall be enforced as follows:

15 “(1) Under section 8 of the Federal Deposit In-
16 surance Act, in the case of—

17 “(A) national banks, and Federal branches
18 and Federal agencies of foreign banks, by the
19 head of the agency responsible for chartering
20 and regulating national banks;

21 “(B) member banks of the Federal Reserve
22 System (other than national banks), branches
23 and agencies of foreign banks (other than Fed-
24 eral branches, Federal agencies, and insured
25 State branches of foreign banks), commercial

1 lending companies owned or controlled by for-
2 eign banks, and organizations operating under
3 section 25 or 25A of the Federal Reserve Act,
4 by the Board of Governors of the Federal Re-
5 serve System;

6 “(C) banks insured by the Federal Deposit
7 Insurance Corporation (other than members of
8 the Federal Reserve System, Federal savings
9 associations, and savings and loan holding com-
10 panies) and insured State branches of foreign
11 banks, by the Board of Directors of the Federal
12 Deposit Insurance Corporation; and

13 “(D) Federal savings associations and sav-
14 ings and loan holding companies, by the Direc-
15 tor of the Office of Thrift Supervision.

16 “(2) Under subtitle E of the Consumer Finan-
17 cial Protection Agency Act of 2009, by the Agency
18 in the case of a covered person under that Act.

19 “(3) Under the Federal Credit Union Act, by
20 the National Credit Union Administration Board
21 with respect to any Federal credit union.

22 “(4) Under subtitle IV of title 49, United
23 States Code, by the Secretary of Transportation,
24 with respect to all carriers subject to the jurisdiction
25 of the Surface Transportation Board.

1 “(5) Under the Federal Aviation Act of 1958,
2 by the Secretary of Transportation with respect to
3 any air carrier or foreign air carrier subject to that
4 Act.

5 “(6) Under the Packers and Stockyards Act,
6 1921 (except as provided in section 406 of that Act),
7 by the Secretary of Agriculture with respect to any
8 activities subject to that Act.

9 “(7) Under the Commodity Exchange Act, with
10 respect to a person subject to the jurisdiction of the
11 Commodity Futures Trading Commission.

12 “(8) Under the Federal securities law and any
13 other laws subject to the jurisdiction of the Securi-
14 ties and Exchange Commission, with respect to a
15 person subject to the jurisdiction of the Securities
16 and Exchange Commission.

17 Any term used in paragraph (1) that is not defined in
18 this title or otherwise defined in section 3(s) of the Federal
19 Deposit Insurance Act shall have the meaning given to
20 such term in section 1(b) of the International Banking Act
21 of 1978.”;

22 (C) in paragraph (2) of subsection (c)—

23 (i) by inserting “the Agency and” be-
24 fore “the Federal Trade Commission” in
25 the first sentence;

1 (ii) by inserting “Agency and the Fed-
2 eral Trade” after “provide the”; and

3 (iii) by inserting “Agency,” before
4 “Federal Trade Commission” in the sec-
5 ond sentence;

6 (D) in paragraph (4) of subsection (c)—

7 (i) by inserting “Agency”, before “the
8 Federal Trade Commission”; and

9 (ii) inserting “Agency, the Federal
10 Trade” after “complaint of the”;

11 (E) in paragraph (2) of subsection (f), by
12 inserting “the Federal Trade Commission”
13 after “in consultation with”;

14 (F) by striking subsection (e) and inserting
15 the following new subsection:

16 “(e) REGULATORY AUTHORITY.—The Agency shall
17 prescribe such regulations as necessary to carry out the
18 purposes of this Act, except that, with respect to sections
19 615(e) and 628 of this title, the agencies identified in sub-
20 sections (a) and (b) of this section shall prescribe such
21 regulations as necessary to carry out the purposes of such
22 sections with respect to entities within their enforcement
23 authority under such subsections.”; and

24 (G) in the heading of subsection (g) by
25 striking “FTC”.

1 (8) SECTION 623.—Section 623 of the Fair
2 Credit Reporting Act (15 U.S.C. 1681s–2) is
3 amended—

4 (A) by amending subparagraph (a)(7)(D)
5 to read as follows:

6 “(D) MODEL DISCLOSURE.—

7 “(i) DUTY OF AGENCY TO PRE-
8 PARE.—The Agency shall prescribe a brief
9 model disclosure a financial institution
10 may use to comply with subparagraph (A),
11 which shall not exceed 30 words.

12 “(ii) USE OF MODEL NOT RE-
13 QUIRED.—No provision of this paragraph
14 shall be construed as requiring a financial
15 institution to use any such model form pre-
16 scribed by the Agency.

17 “(iii) COMPLIANCE USING MODEL.—A
18 financial institution shall be deemed to be
19 in compliance with subparagraph (A) if the
20 financial institution uses any such model
21 form prescribed by the Agency, or the fi-
22 nancial institution uses any such model
23 form and rearranges its format.”.

24 (B) by amending subsection (e) to read as
25 follows:

1 “(e) ACCURACY GUIDELINES AND REGULATIONS RE-
2 QUIRED.—

3 “(1) GUIDELINES.—The Agency shall, with re-
4 spect to the entities that are subject to its enforce-
5 ment authority under section 621—

6 “(A) establish and maintain guidelines for
7 use by each person that furnishes information
8 to a consumer reporting agency regarding the
9 accuracy and integrity of the information relat-
10 ing to consumers that such entities furnish to
11 consumer reporting agencies, and update such
12 guidelines as often as necessary; and

13 “(B) prescribe regulations requiring each
14 person that furnishes information to a con-
15 sumer reporting agency to establish reasonable
16 policies and procedures or implementing the
17 guidelines established pursuant to subpara-
18 graph (A).

19 “(2) CRITERIA.—In developing the guidelines
20 required by paragraph (1)(A), the Agency shall—

21 “(A) identify patterns, practices, and spe-
22 cific forms of activity that can compromise the
23 accuracy and integrity of information furnished
24 to consumer reporting agencies;

1 “(B) review the methods (including techno-
2 logical means) used to furnish information re-
3 lating to consumers to consumer reporting
4 agencies;

5 “(C) determine whether persons that fur-
6 nish information to consumer reporting agen-
7 cies maintain and enforce policies to ensure the
8 accuracy and integrity of information furnished
9 to consumer reporting agencies; and

10 “(D) examine the policies and processes
11 that persons that furnish information to con-
12 sumer reporting agencies employ to conduct re-
13 investigations and correct inaccurate informa-
14 tion relating to consumers that has been fur-
15 nished to consumer reporting agencies.”.

16 (c) EQUAL CREDIT OPPORTUNITY ACT.—

17 (1) SECTION 701.—Section 701 of the Equal
18 Credit Opportunity Act (15 U.S.C. 1691) is amend-
19 ed by striking “Board” each place such term ap-
20 pears and inserting “Agency”.

21 (2) SECTION 702.—Section 702(c) of the Equal
22 Credit Opportunity Act (15 U.S.C. 1691a) is
23 amended to read as follows:

24 “(c) The term ‘Agency’ means the Consumer Finan-
25 cial Protection Agency.”.

1 (3) SECTION 703.—Section 703 of the Equal
2 Credit Opportunity Act (15 U.S.C. 1691b) is
3 amended—

4 (A) by striking subsection (b);

5 (B) in subsection (a)—

6 (i) by striking “(1)”; and

7 (ii) by redesignating paragraphs (2),
8 (3), (4), and (5) as subsections (b), (c),
9 (d), and (e), respectively;

10 (C) in subsection (c) (as so redesign-
11 nated)—

12 (i) by striking “paragraph (2)” and
13 inserting “subsection (b)”; and

14 (ii) by striking “such paragraph” and
15 inserting “such subsection”;

16 (D) in subsection (d) (as so redesign-
17 nated)—

18 (i) by striking “subsection” and in-
19 serting “section”;

20 (ii) by striking “Act” and inserting
21 “title”; and

22 (iii) by striking “this paragraph” and
23 inserting “this subsection”; and

1 (E) by striking “Board” each place such
2 term appears in such section and inserting
3 “Agency”.

4 (4) SECTION 704.—Section 704 of the Equal
5 Credit Opportunity Act (15 U.S.C. 1691c) is amend-
6 ed—

7 (A) in subsection (a)—

8 (i) in the matter preceding paragraph
9 (1), by striking “Compliance” and insert-
10 ing “Subject to section 4202 of the Con-
11 sumer Financial Protection Agency Act of
12 2009, compliance”;

13 (ii) in paragraph (1)(A), by striking
14 “Office of the Comptroller of the Cur-
15 rency” and inserting “head of the agency
16 responsible for chartering and regulating
17 national banks”;

18 (iii) in paragraph (1)(B)—

19 (I) by inserting “of Governors of
20 the Federal Reserve System” after
21 “Board”; and

22 (II) by striking “and” after the
23 semicolon;

24 (iv) in paragraph (1)(C), by inserting
25 “and” after the semicolon;

1 (v) by inserting after subparagraph
2 (C) of paragraph (1) the following new
3 subparagraph:

4 “(D) savings associations and savings and
5 loan holding companies by the Director of the
6 Office of Thrift Supervision;”; and

7 (vi) by amending paragraph (2) to
8 read as follows:

9 “(2) Subtitle E of the Consumer Financial Pro-
10 tection Agency Act of 2009, by the Agency.”;

11 (B) by striking subsection (c) and insert-
12 ing the following new subsection:

13 “(c) OVERALL ENFORCEMENT AUTHORITY OF FED-
14 ERAL TRADE COMMISSION.—Except to the extent that en-
15 forcement of the requirements imposed under this title is
16 specifically committed to some other Government agency
17 (other than the Consumer Financial Protection Agency)
18 under subsection (a) and subject to section 4202 of the
19 Consumer Financial Protection Agency Act of 2009, the
20 Federal Trade Commission shall enforce such require-
21 ments. For the purpose of the exercise by the Federal
22 Trade Commission of its functions and powers under the
23 Federal Trade Commission Act, a violation of any require-
24 ment imposed under this title shall be deemed a violation
25 of a requirement imposed under that Act. All of the func-

1 tions and powers of the Federal Trade Commission under
2 the Federal Trade Commission Act are available to the
3 Commission to enforce compliance by any person with the
4 requirements imposed under this title, irrespective of
5 whether that person is engaged in commerce or meets any
6 other jurisdictional tests in the Federal Trade Commission
7 Act, including the power to enforce any regulation pre-
8 scribed by the Director under this title in the same man-
9 ner as if the violation had been a violation of a Federal
10 Trade Commission trade regulation rule.”; and

11 (C) in subsection (d), by striking “Board”
12 and inserting “Agency”.

13 (5) SECTION 704a.—Section 704A(a)(1) of the
14 Equal Credit Opportunity Act (15 U.S.C. 1691c–
15 1(a)(1)) is amended in by striking “Board” and in-
16 serting “Agency”.

17 (6) SECTION 705.—Section 705 of the Equal
18 Credit Opportunity Act (15 U.S.C. 1691d) is
19 amended—

20 (A) in subsection (f), by striking “Board”
21 each place such term appears and inserting
22 “Agency”; and

23 (B) in subsection (g), by striking “Board”
24 and inserting “Agency”.

1 (7) SECTION 706.—Section 706 of the Equal
2 Credit Opportunity Act (15 U.S.C. 1691e) is amend-
3 ed—

4 (A) in subsection (e)—

5 (i) by striking “Board” each place
6 such term appears and inserting “Agency”;
7 and

8 (ii) by striking “Federal Reserve Sys-
9 tem” and inserting “Consumer Financial
10 Protection Agency”;

11 (B) in subsection (f), by striking “two
12 years” each place such term appears and insert-
13 ing “5 years”;

14 (C) in subsection (g)—

15 (i) by striking “The agencies having”,
16 in the 1st sentence, and inserting “The
17 Agency and the agencies having”;

18 (ii) by striking “Each agency re-
19 ferred”, in the 2nd sentence, and inserting
20 “The Agency and each agency referred”;

21 (iii) by striking “Each such agency”,
22 in the 3rd sentence, and inserting “The
23 Agency and each such agency”; and

24 (iv) by striking “whenever the agen-
25 cy” in the 3rd sentence, and inserting

1 “whenever the Agency or an agency having
2 responsibility for administrative enforce-
3 ment under section 704”; and

4 (D) in subsection (k)—

5 (i) by striking “Whenever an agency”
6 and inserting “Whenever the Agency or an
7 agency”; and

8 (ii) by striking “the agency shall no-
9 tify” and inserting “the Agency, or an
10 agency referred to in any such paragraph,
11 as the case may be, shall notify”.

12 (8) SECTION 707.—Section 707 of the Equal
13 Credit Opportunity Act (15 U.S.C. 1691f) is amend-
14 ed by striking “Board” each place such term ap-
15 pears and inserting “Agency”.

16 (d) FAIR DEBT COLLECTION PRACTICES ACT.—

17 (1) SECTION 803.—Section 803 of the Fair
18 Debt Collection Practices Act (15 U.S.C. 1692a) is
19 amended—

20 (A) by redesignating paragraphs (1), (2),
21 (3), (4), (5), (6), (7), and (8) as paragraphs
22 (2), (3), (4), (5), (6), (7), (8), and (9), respec-
23 tively; and

24 (B) by inserting before paragraph (2) (as
25 so redesignated) the following new paragraph:

1 “(1) The term ‘Agency’ means the Consumer
2 Financial Protection Agency.”.

3 (2) SECTION 813.—Section 813(e) of the Fair
4 Debt Collection Practices Act (15 U.S.C. 1692k(e))
5 is amended by striking “Commission” and inserting
6 “Agency”.

7 (3) SECTION 814.—Section 814 of the Fair
8 Debt Collection Practices Act (15 U.S.C. 1692l) is
9 amended—

10 (A) by striking subsection (a) and insert-
11 ing the following new subsection:

12 “(a) FEDERAL TRADE COMMISSION.—Subject to sec-
13 tion 4202 of the Consumer Financial Protection Agency
14 Act of 2009, compliance with this title shall be enforced
15 by the Commission, except to the extent that enforcement
16 of the requirements imposed under this title is specifically
17 committed to another agency (other than the Consumer
18 Financial Protection Agency) under subsection (b). For
19 purpose of the exercise by the Commission of its functions
20 and powers under the Federal Trade Commission Act, a
21 violation of this title shall be deemed an unfair or decep-
22 tive act or practice in violation of that Act. All of the func-
23 tions and powers of the Commission under the Federal
24 Trade Commission Act are available to the Commission
25 to enforce compliance by any person with this title, irre-

1 spective of whether that person is engaged in commerce
2 or meets any other jurisdictional tests in the Federal
3 Trade Commission Act, including the power to enforce the
4 provisions of this title in the same manner as if the viola-
5 tion had been a violation of a Federal Trade Commission
6 trade regulation rule.”;

7 (B) in subsection (b)—

8 (i) in the matter preceding paragraph
9 (1), by striking “Compliance” and insert-
10 ing “ENFORCEMENT BY OTHER AGEN-
11 CY.—Subject to section 4202 of the Con-
12 sumer Financial Protection Agency Act of
13 2009, compliance”;

14 (ii) in paragraph (1)(A), by striking
15 “Office of the Comptroller of the Cur-
16 rency;” and inserting “head of the agency
17 responsible for chartering and regulating
18 national banks;”;

19 (iii) in paragraph (1)(B), by striking
20 “and” after the semicolon;

21 (iv) in paragraph (1)(C), by inserting
22 “and” after the semicolon;

23 (v) by inserting after subparagraph
24 (C) of paragraph (1) the following new
25 subparagraph:

1 “(D) savings associations and savings and
2 loan holding companies by the Director of the
3 Office of Thrift Supervision;”; and

4 (vi) by striking paragraph (2) and in-
5 serting the following new paragraph:

6 “(2) subtitle E of the Consumer Financial Pro-
7 tection Agency Act of 2009, by the Agency;”; and

8 (C) by striking subsection (d) and insert-
9 ing the following new subsection:

10 “(d) REGULATIONS.—The Agency may prescribe reg-
11 ulations with respect to the collection of debts by any debt
12 collector.”.

13 (4) SECTION 815.—Section 815 (15 U.S.C.
14 1692m) is amended—

15 (A) in the section heading, by striking
16 **“Commission”** and inserting **“Agency”**;
17 and

18 (B) by striking “Commission” each place
19 such term appears and inserting “Agency”.

20 (5) SECTION 817.—Section 817 (15 U.S.C.
21 1692o) is amended by striking “Commission” each
22 place such term appears and inserting “Agency”.

23 (e) ELECTRONIC FUND TRANSFER ACT.—

1 (1) SECTION 903.—Section 903 of the Elec-
2 tronic Fund Transfer Act (15 U.S.C. 1693a) is
3 amended—

4 (A) by striking paragraph (3) and insert-
5 ing the following new paragraph:

6 “(3) the term ‘Agency’ means the Consumer Fi-
7 nancial Protection Agency;” and

8 (B) in paragraph (6), by striking “Board”
9 and inserting “Agency”.

10 (2) SECTION 904.—Section 904 of the Elec-
11 tronic Fund Transfer Act (15 U.S.C. 1693b) is
12 amended by striking “Board” each place such term
13 appears and inserting “Agency”.

14 (3) SECTION 905.—Section 905 of the Elec-
15 tronic Fund Transfer Act (15 U.S.C. 1693c) is
16 amended by striking “Board” each place such term
17 appears and inserting “Agency”.

18 (4) SECTION 906.—Section 906(b) of the Elec-
19 tronic Fund Transfer Act (15 U.S.C. 1693d(b)) is
20 amended by striking “Board” and inserting “Agen-
21 cy”.

22 (5) SECTION 907.—Section 907(b) of the Elec-
23 tronic Fund Transfer Act (15 U.S.C. 1693e(b)) is
24 amended by striking “Board” and inserting “Agen-
25 cy”.

1 (6) SECTION 908.—Section 908(f)(7) of the
2 Electronic Fund Transfer Act (15 U.S.C.
3 1693f(f)(7)) is amended by striking “Board” and in-
4 serting “Agency”.

5 (7) SECTION 910.—Section 910(a)(1)(E) of the
6 Electronic Fund Transfer Act (15 U.S.C.
7 1693h(a)(1)(E)) is amended by striking “Board”
8 and inserting “Agency”.

9 (8) SECTION 911.—Section 911(b)(3) of the
10 Electronic Fund Transfer Act (15 U.S.C.
11 1693i(b)(3)) is amended by striking “Board” and in-
12 serting “Agency”.

13 (9) SECTION 915.—Section 915(d) of the Elec-
14 tronic Fund Transfer Act (15 U.S.C. 1693m(d)) is
15 amended—

16 (A) by striking “Board” each place such
17 term appears and inserting “Agency”; and

18 (B) by striking “Federal Reserve System”
19 and inserting “Consumer Financial Protection
20 Agency”.

21 (10) SECTION 917.—Section 917 of the Elec-
22 tronic Fund Transfer Act (15 U.S.C. 1693o) is
23 amended—

24 (A) in subsection (a)—

1 (i) by striking “Compliance” and in-
2 serting “Subject to section 4202 of the
3 Consumer Financial Protection Agency Act
4 of 2009, compliance”;

5 (ii) in paragraph (1)(A), by striking
6 “Office of the Comptroller of the Cur-
7 rency” and inserting “head of the agency
8 responsible for chartering and regulating
9 national banks”;

10 (iii) in paragraph (1)(B), by inserting
11 “of Governors of the Federal Reserve Sys-
12 tem” after “Board”; and

13 (iv) by striking paragraph (2) and in-
14 serting:

15 “(2) subtitle E of the Consumer Financial Pro-
16 tection Agency Act of 2009, by the Agency;”; and

17 (B) by striking subsection (c) and insert-
18 ing the following new subsection:

19 “(c) OVERALL ENFORCEMENT AUTHORITY OF THE
20 FEDERAL TRADE COMMISSION.—Except to the extent
21 that enforcement of the requirements imposed under this
22 title is specifically committed to some other Government
23 agency (other than the Consumer Financial Protection
24 Agency) under subsection (a) and subject to section 4202
25 of the Consumer Financial Protection Agency Act of 2009,

1 the Federal Trade Commission shall enforce such require-
2 ments. For the purpose of the exercise by the Federal
3 Trade Commission of its functions and powers under the
4 Federal Trade Commission Act, a violation of any require-
5 ment imposed under this title shall be deemed a violation
6 of a requirement imposed under that Act. All of the func-
7 tions and powers of the Federal Trade Commission under
8 the Federal Trade Commission Act are available to the
9 Commission to enforce compliance by any person subject
10 to the jurisdiction of the Commission with the require-
11 ments imposed under this title, irrespective of whether
12 that person is engaged in commerce or meets any other
13 jurisdictional tests in the Federal Trade Commission
14 Act.”.

15 (11) SECTION 918.—Section 918 of the Elec-
16 tronic Fund Transfer Act (15 U.S.C. 1693p) is
17 amended by striking “Board” each place such term
18 appears and inserting “Agency”.

19 (12) SECTION 919.—Section 919 of the Elec-
20 tronic Fund Transfer Act (15 U.S.C. 1693q) is
21 amended by striking “Board” each place such term
22 appears and inserting “Agency”.

23 (13) SECTION 920.—Section 920 of the Elec-
24 tronic Fund Transfer Act (15 U.S.C. 1693r) is

1 amended by striking “Board” each place such term
2 appears and inserting “Agency”.

3 (f) AMENDMENTS TO HOEPA RELATING TO THE
4 TRUTH IN LENDING ACT.—Section 158 of the Home
5 Ownership and Equity Protection Act of 1994 (15 U.S.C.
6 1601 note) (relating to hearings on home equity lending)
7 is amended—

8 (1) in subsection (a), by striking “Board of
9 Governors of the Federal Reserve System, in con-
10 sultation with the Consumer Advisory Council of the
11 Board,” and inserting “Consumer Financial Protec-
12 tion Agency, in consultation with the Advisory
13 Board to the Agency”; and

14 (2) in subsection (b), by striking “Board of
15 Governors of the Federal Reserve System” and in-
16 serting “Consumer Financial Protection Agency”.

17 (g) AMENDMENT TO THE FAIR AND ACCURATE
18 CREDIT TRANSACTIONS ACT OF 2003 RELATING TO THE
19 FAIR CREDIT REPORTING ACT.—Section 214(b)(1) of the
20 Fair and Accurate Credit Transactions Act of 2003 (15
21 U.S.C. 1681s–3 note) is amended by striking “The Fed-
22 eral banking agencies, the National Credit Union Adminis-
23 tration, and the Commission, with respect to the entities
24 that are subject to their respective enforcement authority
25 under section 621 of the Fair Credit Reporting Act and”

1 and inserting “The Consumer Financial Protection Agen-
2 cy, with respect to a person subject to the enforcement
3 authority of the Agency, the Commodity Futures Trading
4 Commission, and”.

5 **SEC. 4805. AMENDMENTS TO THE EXPEDITED FUNDS**
6 **AVAILABILITY ACT.**

7 (a) SECTION 605.—Section 605(f)(1) of the Expe-
8 dited Funds Availability Act (12 U.S.C. 4004(f)(1)) is
9 amended by inserting “, in consultation with the Director
10 of the Consumer Financial Protection Agency,” after
11 “Board”.

12 (b) SECTION 609.—Section 609(a) of the Expedited
13 Funds Availability Act (12 U.S.C. 4008(a)) is amended
14 by inserting “, in consultation with the Director of the
15 Consumer Financial Protection Agency,” after “Board”.

16 **SEC. 4806. AMENDMENTS TO THE FEDERAL DEPOSIT IN-**
17 **SURANCE ACT.**

18 (a) SECTION 8.—Section 8(t) the Federal Deposit In-
19 surance Act (12 U.S.C. 1818(t)), as amended by section
20 1111(b)(2), is further amended by adding at the end the
21 following new paragraph:

22 “(7) REFERRAL TO CONSUMER FINANCIAL PRO-
23 TECTION COMMISSION.—Each appropriate Federal
24 banking agency shall make a referral to the Con-
25 sumer Financial Protection Agency when the Fed-

1 eral banking agency has a reasonable belief that a
2 violation of an enumerated consumer law, as defined
3 in section 4202(e)(2) of the Consumer Financial
4 Protection Agency Act of 2009, by any insured de-
5 pository institution or institution-affiliated party
6 within the jurisdiction of that appropriate Federal
7 banking agency.”.

8 (b) SECTION 43.—Section 43 of the Federal Deposit
9 Insurance Act (12 U.S.C. 1831t) is amended—

10 (1) in subsection (c), by striking “Federal
11 Trade Commission” and inserting “Agency”;

12 (2) in subsection (d), by striking “Federal
13 Trade Commission” and inserting “Agency”;

14 (3) in subsection (e)—

15 (A) in paragraph (2)(B), by striking “Fed-
16 eral Trade Commission” and inserting “Agen-
17 cy”; and

18 (B) by adding at the end the following new
19 paragraph:

20 “(5) AGENCY.—The term ‘Agency’ means the
21 Consumer Financial Protection Agency.”.

22 (c) SECTION 43(f).—Section 43(f) of the Federal De-
23 posit Insurance Act (12 U.S.C. 1831t(f)) is amended—

24 (1) by striking paragraph (1) and inserting the
25 following new paragraph:

1 “(1) LIMITED ENFORCEMENT AUTHORITY.—
 2 Compliance with the requirements of subsections (b),
 3 (c), and (e), and any regulation prescribed or order
 4 issued under such subsection, shall be enforced
 5 under the Consumer Financial Protection Agency
 6 Act of 2009 by the Agency with respect to any per-
 7 son (and without regard to the provision of a con-
 8 sumer financial product or service).”; and

9 (2) in paragraph (2), by striking subparagraph
 10 (C) and inserting the following new subparagraph:

11 “(C) LIMITATION ON STATE ACTION
 12 WHILE FEDERAL ACTION PENDING.—If the
 13 Agency has instituted an enforcement action for
 14 a violation of this section, no appropriate State
 15 supervisory may, during the pendency of such
 16 action, bring an action under this section
 17 against any defendant named in the complaint
 18 of the Agency for any violation of this section
 19 that is alleged in that complaint.”.

20 **SEC. 4807. AMENDMENTS TO THE GRAMM-LEACH-BLILEY**
 21 **ACT.**

22 (a) SECTION 501.—Section 501(b) of the Gramm-
 23 Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by in-
 24 serting “(other than the Consumer Financial Protection
 25 Agency)” after “title”.

1 (b) SECTION 502.—Section 502(e)(5) of the Gramm-
2 Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by
3 inserting “the Consumer Financial Protection Agency,”
4 after “(including”.

5 (c) SECTION 503.—Section 503(e)(1) of the Gramm-
6 Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

7 (1) by inserting “Consumer Financial Protec-
8 tion Agency in consultation with the other” before
9 “agencies”; and

10 (2) by striking “jointly”.

11 (d) SECTION 504.—Section 504(a)(1) of the Gramm-
12 Leach-Bliley Act (15 U.S.C. 6804(a)(1)) is amended—

13 (1) by striking “The Federal banking agencies,
14 the National Credit Union Administration, the Sec-
15 retary of the Treasury,” and inserting “The Con-
16 sumer Financial Protection Agency and”;

17 (2) by striking “, and the Federal Trade Com-
18 mission”; and

19 (3) by inserting “the Federal banking agencies,
20 the National Credit Union Administration, the Sec-
21 retary of the Treasury, the Federal Trade Commis-
22 sion, and” before “representatives of State insurance
23 authorities”.

24 (e) SECTION 505.—

1 (1) Section 505(a) of the Gramm-Leach-Bliley
2 Act (15 U.S.C. 6805(a)) is amended—

3 (A) in the matter preceding paragraph (1),
4 by striking “This subtitle and the regulations
5 prescribed thereunder shall be enforced by” and
6 inserting “Subject to section 4202 of the Con-
7 sumer Financial Protection Agency Act of
8 2009, this subtitle and the regulations pre-
9 scribed under this title shall be enforced by the
10 Consumer Financial Protection Agency,”; and

11 (B) by inserting after paragraph (7) the
12 following new paragraph:

13 “(8) Under the Consumer Financial Protection
14 Agency Act of 2009, by the Consumer Financial
15 Protection Agency in the case of financial institu-
16 tions and other covered persons and service pro-
17 viders subject to the jurisdiction of the Agency
18 under that Act, but not with respect to the stand-
19 ards under section 501.”.

20 (2) Section 505(b)(1) of the Gramm-Leach-Bli-
21 ley Act (15 U.S.C. 6805(b)(1)) is amended by in-
22 serting “, other than the Consumer Financial Pro-
23 tection Agency,” after “described in subsection (a)”.

24 (f) SECTION 507.—Subsection 507(b) of the Gramm-
25 Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by strik-

1 ing “Federal Trade Commission” and inserting “Con-
 2 sumer Financial Protection Agency, or in the case of a
 3 rule under section 501(b), the Federal Trade Commission
 4 or the Securities and Exchange Commission”.

5 **SEC. 4808. AMENDMENTS TO THE HOME MORTGAGE DIS-**
 6 **CLOSURE ACT OF 1975.**

7 (a) SECTION 303.—Section 303 of the Home Mort-
 8 gage Disclosure Act of 1975 (12 U.S.C. 2802) is amend-
 9 ed—

10 (1) by redesignating paragraphs (1), (2), (3),
 11 (4), (5), and (6) as paragraphs (2), (3), (4), (5),
 12 (6), and (7), respectively; and

13 (2) by inserting before paragraph (2) (as so re-
 14 designated) the following new paragraph:

15 “(1) The term ‘Agency’ means the Consumer
 16 Financial Protection Agency.”.

17 (b) UNIVERSAL AMENDMENT RELATING TO AGEN-
 18 CY.—Except as provided in subsections (c), (d), (e), and
 19 (f), the Home Mortgage Disclosure Act of 1975 (12
 20 U.S.C. 2801–11) is amended by striking “Board” each
 21 place such term appears and inserting “Agency”.

22 (c) SECTION 304.—Section 304 of the Home Mort-
 23 gage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is
 24 amended—

25 (1) in subsection (b)—

1 (A) by striking “and” after the semicolon
2 at the end of paragraph (3);

3 (B) by striking “and gender” in paragraph
4 (4), and inserting “age, and gender”;

5 (C) by striking the period at the end of
6 paragraph (4) and inserting a semicolon; and

7 (D) by inserting after paragraph (4) the
8 following new paragraphs:

9 “(5) the number and dollar amount of mort-
10 gage loans grouped according to the following meas-
11 urements:

12 “(A) the total points and fees payable at
13 origination in connection with the mortgage as
14 determined by the Agency, taking into account
15 section 103(aa)(4) of the Truth in Lending Act
16 (15 U.S.C. 1602(aa)(4));

17 “(B) the difference between the annual
18 percentage rate associated with the loan and a
19 benchmark rate or rates for all loans;

20 “(C) the term in months of any prepay-
21 ment penalty or other fee or charge payable on
22 repayment of some portion of principal or the
23 entire principal in advance of scheduled pay-
24 ments; and

1 “(D) such other information as the Agency
2 may require; and

3 “(6) the number and dollar amount of mort-
4 gage loans and completed applications grouped ac-
5 cording to the following measurements:

6 “(A) the value of the real property pledged
7 or proposed to be pledged as collateral;

8 “(B) the actual or proposed term in
9 months of any introductory period after which
10 the rate of interest may change;

11 “(C) the presence of contractual terms or
12 proposed contractual terms that would allow the
13 mortgagor or applicant to make payments other
14 than fully-amortizing payments during any por-
15 tion of the loan term;

16 “(D) the actual or proposed term in
17 months of the mortgage loan;

18 “(E) the channel through which applica-
19 tion was made, including retail, broker, and
20 other relevant categories;

21 “(F) as the Agency may determine to be
22 appropriate, a unique identifier that identifies
23 the loan originator as set forth in section 1503
24 of the Secure and Fair Enforcement for Mort-
25 gage Licensing Act of 2008;

1 “(G) as the Agency may determine to be
2 appropriate, a universal loan identifier;

3 “(H) as the Agency may determine to be
4 appropriate, the parcel number that cor-
5 responds to the real property pledged or pro-
6 posed to be pledged as collateral;

7 “(I) the credit score of mortgage appli-
8 cants and mortgagors in such form as the
9 Agency may prescribe, except that the Agency
10 shall modify or require modification of credit
11 score data that is or will be available to the
12 public to protect the compelling privacy interest
13 of the mortgage applicant or mortgagors; and

14 “(J) such other information as the Agency
15 may require.”;

16 (2) by striking subsection (h) and inserting the
17 following new subsection:

18 “(h) SUBMISSION TO AGENCIES.—

19 “(1) IN GENERAL.—The data required to be
20 disclosed under subsection (b) shall be submitted to
21 the Agency or to the appropriate agency for any in-
22 stitution reporting under this title, in accordance
23 with regulations prescribed by the Agency. Institu-
24 tions will not be required to report new data re-
25 quired under section 4808(c) before the first Janu-

1 ary 1 that occurs after the end of the 9-month pe-
2 riod beginning on the date that regulations pre-
3 scribed by the Agency are prescribed in final form.

4 “(2) REGULATIONS.—Notwithstanding the re-
5 quirement of section 304(a)(2)(A) for disclosure by
6 census tract, the Agency, in cooperation with other
7 appropriate regulators, including—

8 “(A) the head of the agency responsible for
9 chartering and regulating national banks for
10 national banks and Federal branches, Federal
11 agencies of foreign banks, and savings associa-
12 tions;

13 “(B) the Federal Deposit Insurance Cor-
14 poration for depository institutions insured by
15 the Federal Deposit Insurance Corporation
16 (other than members of the Federal Reserve
17 System, Federal savings associations, and sav-
18 ings and loan holding companies) and insured
19 State branches of foreign banks;

20 “(C) the Director of the Office of Thrift
21 Supervision for Federal savings associations
22 and savings and loan holding companies;

23 “(D) the National Credit Union Adminis-
24 tration Board for credit unions; and

1 “(E) the Secretary of Housing and Urban
2 Development for other lending institutions not
3 regulated by an agency referred to in subpara-
4 graph (A), (B), (C), or (D),
5 shall develop regulations prescribing the format for
6 such disclosures, the method for submission of the
7 data to the appropriate regulatory agency, and the
8 procedures for disclosing the information to the pub-
9 lic.

10 “(3) REQUIRED DISCLOSURES.—The regula-
11 tions prescribed under paragraph (2) shall require
12 the collection of data required to be disclosed under
13 subsection (b) with respect to loans sold by each in-
14 stitution reporting under this title, and, in addition,
15 shall require disclosure of the class of the purchaser
16 of such loans.

17 “(4) ADDITIONAL DATA OR EXPLANATIONS.—
18 Any reporting institution may submit in writing to
19 the Agency or to the appropriate agency such addi-
20 tional data or explanations as it deems relevant to
21 the decision to originate or purchase mortgage
22 loans.”;

23 (3) in subsection (i), by striking “subsection
24 (b)(4)” and inserting “paragraphs (4), (5), and (6)
25 of subsection (b)”;

1 (4) in subsection (j)—

2 (A) by striking “(as” where such term ap-
3 pears in paragraph (1) and inserting “(con-
4 taining loan-level and application-level informa-
5 tion relating to disclosures required under sub-
6 sections (a) and (b) and as otherwise”;

7 (B) by striking “in the format in which
8 such information is maintained by the institu-
9 tion” where such term appears in paragraph
10 (2)(A), and inserting “in such formats as the
11 Agency may require”; and

12 (C) by striking paragraph (3) and insert-
13 ing the following new paragraph:

14 “(3) CHANGE OF FORM NOT REQUIRED.—A de-
15 pository institution meets the disclosure requirement
16 of paragraph (1) if the institution provides the infor-
17 mation required under such paragraph in such for-
18 mats as the Agency may require.”; and

19 (5) by striking paragraph (2) of subsection (m)
20 and inserting the following new paragraph:

21 “(2) FORM OF INFORMATION.—In complying
22 with paragraph (1), a depository institution shall
23 provide the person requesting the information with
24 a copy of the information requested in such formats
25 as the Agency may require.”.

1 (d) SECTION 305.—Section 305 of the Home Mort-
2 gage Disclosure Act of 1975 (12 U.S.C. 2804) is amend-
3 ed—

4 (1) by striking subsection (b) and inserting the
5 following new subsection:

6 “(b) POWERS OF CERTAIN OTHER AGENCIES.—Com-
7 pliance with the requirements imposed under this title
8 shall be enforced under—

9 “(1) section 8 of the Federal Deposit Insurance
10 Act, in the case of—

11 “(A) national banks, and Federal branches
12 and Federal agencies of foreign banks, by the
13 head of the agency responsible for chartering
14 and regulating national banks;

15 “(B) member banks of the Federal Reserve
16 System (other than national banks), branches
17 and agencies of foreign banks (other than Fed-
18 eral branches, Federal agencies, and insured
19 State branches of foreign banks), commercial
20 lending companies owned or controlled by for-
21 eign banks, and organizations operating under
22 section 25 or 25A of the Federal Reserve Act,
23 by the Board;

24 “(C) depository institutions insured by the
25 Federal Deposit Insurance Corporation (other

1 than members of the Federal Reserve System,
2 Federal savings associations, and savings and
3 loan holding companies) and insured State
4 branches of foreign banks, by the Board of Di-
5 rectors of the Federal Deposit Insurance Cor-
6 poration; and

7 “(D) Federal savings associations, and
8 savings and loan holding companies, by the Di-
9 rector of the Office of Thrift Supervision;

10 “(2) subtitle E of the Consumer Financial Pro-
11 tection Agency Act of 2009, by the Agency;

12 “(3) the Federal Credit Union Act, by the Ad-
13 ministrator of the National Credit Union Adminis-
14 tration with respect to any credit union; and

15 “(4) other lending institutions, by the Secretary
16 of Housing and Urban Development. The terms
17 used in paragraph (1) that are not defined in this
18 title or otherwise defined in section 3(s) of the Fed-
19 eral Deposit Insurance Act (12 U.S.C. 1813(s))
20 shall have the meaning given to them in section 1(b)
21 of the International Banking Act of 1978 (12 U.S.C.
22 3101).

23 The terms used in paragraph (1) that are not defined in
24 this title or otherwise defined in section 3(s) of the Federal
25 Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the

1 meaning given to them in section 1(b) of the International
2 Banking Act of 1978.”; and

3 (2) by inserting at the end of section 305 the
4 following new subsection:

5 “(d) OVERALL ENFORCEMENT AUTHORITY OF THE
6 CONSUMER FINANCIAL PROTECTION AGENCY.—Subject
7 to section 4202 of the Consumer Financial Protection
8 Agency Act of 2009, enforcement of the requirements im-
9 posed under this title is committed to each of the agencies
10 under subsection (b). The Agency may exercise its authori-
11 ties under the Consumer Financial Protection Agency Act
12 of 2009 to exercise principal authority to examine and en-
13 force compliance by any person with the requirements
14 under this title.”.

15 (e) SECTION 306.—Subsection 306(b) of the Home
16 Mortgage Disclosure Act of 1975 (12 U.S.C. 2805(b)) is
17 amended to read as follows:

18 “(b) The Agency may, by regulation, exempt from the
19 requirements of this title any State chartered depository
20 institution within any State or subdivision of any state if
21 the Agency determines that, under the law of such State
22 or subdivision, that institution is subject to requirements
23 substantially similar to those imposed under this title, and
24 that such law contains adequate provisions for enforce-
25 ment. Notwithstanding any other provision of this sub-

1 section, compliance with the requirements imposed under
2 this subsection shall be enforced by the head of the agency
3 responsible for chartering and regulating national banks
4 under section 8 of the Federal Deposit Insurance Act in
5 the case of national banks and savings association the de-
6 posits of which are insured by the Federal Deposit Insur-
7 ance Corporation.”.

8 (f) SECTION 307.—Section 307 of the Home Mort-
9 gage Disclosure Act of 1975 (12 U.S.C. 2806) is amended
10 to read as follows:

11 **“SEC. 307. RESEARCH AND IMPROVED METHODS.**

12 “(a) ENHANCED COMPLIANCE IN ECONOMICAL MAN-
13 NER.—

14 “(1) IN GENERAL.—The Director of the Con-
15 sumer Financial Protection Agency, with the assist-
16 ance of the Secretary, the Director of the Bureau of
17 the Census, the Board of Governors of the Federal
18 Reserve System, the Federal Deposit Insurance Cor-
19 poration, and such other persons as the Consumer
20 Financial Protection Agency deems appropriate,
21 shall develop or assist in the improvement of, meth-
22 ods of matching addresses and census tracts to fa-
23 cilitate compliance by depository institutions in as
24 economical a manner as possible with the require-
25 ments of this title.

1 “(2) AUTHORIZATION OF APPROPRIATION.—

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out this subsection.

4 “(3) AUTHORITY OF AGENCY.—The Director of
5 the Consumer Financial Protection Agency is au-
6 thorized to utilize, contract with, act through, or
7 compensate any person or agency in order to carry
8 out this subsection.

9 “(b) RECOMMENDATIONS TO THE CONGRESS.—The
10 Director of the Consumer Financial Protection Agency
11 shall recommend to the Committee on Financial Services
12 of the House of Representatives and the Committee on
13 Banking, Housing, and Urban Affairs of the Senate such
14 additional legislation as the Director of the Consumer Fi-
15 nancial Protection Agency deems appropriate to carry out
16 the purpose of this title.”.

17 **SEC. 4809. AMENDMENTS TO DIVISION D OF THE OMNIBUS**
18 **APPROPRIATIONS ACT, 2009.**

19 (a) Section 626(a) of title VI of division D of the
20 Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note)
21 (as amended by the Credit Card Accountability Responsi-
22 bility and Disclosure Act of 2009) is amended—

23 (1) by striking by paragraph (1) and inserting
24 the following new paragraph: “(1) The Director of
25 the Consumer Financial Protection Agency shall

1 have authority to prescribe regulations with respect
2 to mortgage loans in accordance with section 553 of
3 title 5, United States Code. Such rulemaking shall
4 relate to unfair or deceptive acts or practices regard-
5 ing mortgage loans, which may include unfair or de-
6 ceptive acts or practices involving loan modification
7 and foreclosure rescue services. Any violation of a
8 regulation prescribed under this subsection shall be
9 treated as a violation of a regulation prohibiting un-
10 fair, deceptive, or abusive acts or practices under the
11 Consumer Financial Protection Agency Act of
12 2009.”;

13 (2) by striking paragraph (2);

14 (3) by striking paragraph (3); and

15 (4) by striking paragraph (4) and inserting the
16 following new paragraph:

17 “(2) The Director of the Consumer Financial Protec-
18 tion Agency shall enforce the regulations issued under
19 paragraph (1) in the same manner, by the same means,
20 and with the same jurisdiction, powers, and duties as
21 though all applicable terms and provisions of the Con-
22 sumer Financial Protection Agency Act of 2009 were in-
23 corporated into and made part of this section.”.

24 (b) Section 626(b) of title VI of division D of the
25 Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note)

1 (as amended by the Credit Card Accountability Responsi-
2 bility and Disclosure Act of 2009) is amended by striking
3 “primary Federal regulator” each place it appears and in-
4 serting “Consumer Financial Protection Agency”.

5 **SEC. 4810. AMENDMENTS TO THE HOMEOWNERS PROTEC-**
6 **TION ACT OF 1998.**

7 Section 10 of the Homeowners Protection Act of
8 1998 (12 U.S.C. 4909) is amended—

9 (1) in the matter preceding paragraph (1) of
10 subsection (a), by striking “Compliance” and insert-
11 ing “Subject to section 4202 of the Consumer Fi-
12 nancial Protection Agency Act of 2009, compliance”;

13 (2) in subsection (a)(2), by striking “and” after
14 the semicolon at the end;

15 (3) in subsection (a)(3), by striking the period
16 at the end and inserting “; and”;

17 (4) by inserting after subsection (a)(3), the fol-
18 lowing new paragraph:

19 “(4) subtitle E of the Consumer Financial Pro-
20 tection Agency Act of 2009, by the Consumer Fi-
21 nancial Protection Agency.”; and

22 (5) in subsection (b)(2), by inserting “, subject
23 to section 4202 of the Consumer Financial Protec-
24 tion Agency Act of 2009” before the period at the
25 end.

1 **SEC. 4811. AMENDMENTS TO THE REAL ESTATE SETTLE-**
2 **MENT PROCEDURES ACT OF 1974.**

3 (a) SECTION 3.—Section 3 of the Real Estate Settle-
4 ment Procedures Act of 1974 (12 U.S.C. 2602) is amend-
5 ed—

6 (1) in paragraph (7), by striking “and” after
7 the semicolon at the end;

8 (2) in paragraph (8), by striking the period at
9 the end and inserting “; and”; and

10 (3) by adding at the end the following new
11 paragraph:

12 “(9) the term ‘Agency’ means the Consumer Fi-
13 nancial Protection Agency.”.

14 (b) SECTION 4.—Section 4 of the Real Estate Settle-
15 ment Procedures Act of 1974 (12 U.S.C. 2603) is amend-
16 ed—

17 (1) in subsection (a), by striking the first sen-
18 tence and inserting the following: “The Agency shall
19 publish a single, integrated disclosure for mortgage
20 loan transactions, including real estate settlement
21 cost statements, which include the disclosure re-
22 quirements of this title, in conjunction with the dis-
23 closure requirements of the Truth in Lending Act
24 (15 U.S.C. 1601 note et seq.) that, taken together,
25 may apply to transactions subject to both or either
26 law. The purpose of such model disclosure shall be

1 to facilitate compliance with the disclosure require-
2 ments of those titles, and to aid the borrower or les-
3 see in understanding the transaction by utilizing
4 readily understandable language to simplify the tech-
5 nical nature of the disclosures.”;

6 (2) by striking “Secretary” each place such
7 term appears and inserting “Agency”; and

8 (3) by striking “form” each place such term ap-
9 pears and inserting “forms”.

10 (c) SECTION 5.—Section 5 of the Real Estate Settle-
11 ment Procedures Act of 1974 (12 U.S.C. 2604) is amend-
12 ed—

13 (1) by striking “Secretary” each place such
14 term appears, and inserting “Agency”; and

15 (2) by striking the first sentence of subsection
16 (a), and inserting “The Agency shall prepare and
17 distribute booklets jointly complying with the re-
18 quirements of the Truth in Lending Act (15 U.S.C.
19 1601 note et seq.) and the provisions of this title,
20 in order to help persons borrowing money to finance
21 the purchase of residential real estate better to un-
22 derstand the nature and costs of real estate settle-
23 ment services.”.

1 (d) SECTION 6.—Section 6(j)(3) of the Real Estate
2 Settlement Procedures Act of 1974 (12 U.S.C. 2605(j)(3))
3 is amended—

4 (1) by striking “Secretary” and inserting “Di-
5 rector of the Agency”; and

6 (2) by striking “by regulations that shall take
7 effect not later than April 20, 1991,” and inserting
8 “by regulation,”.

9 (e) SECTION 7.—Section 7 of the Real Estate Settle-
10 ment Procedures Act of 1974 (12 U.S.C. 2606) is amend-
11 ed by striking “Secretary” and inserting “the Director of
12 the Agency”.

13 (f) SECTION 8.—Section 8 of the Real Estate Settle-
14 ment Procedures Act of 1974 (12 U.S.C. 2607) is amend-
15 ed—

16 (1) in subsection (c)(5), by striking “prescribed
17 by the Secretary” and inserting “prescribed by the
18 Director of the Agency”; and

19 (2) in subsection (d)(4)—

20 (A) by striking “The Secretary,” and in-
21 serting “The Agency, the Secretary,”; and

22 (B) by adding at the end the following new
23 sentence: “However, to the extent that a Fed-
24 eral law authorizes the Agency and other Fed-
25 eral and State agencies to enforce or administer

1 the law, the Agency shall have primary author-
2 ity to enforce or administer that Federal law in
3 accordance with section 4202 of the Consumer
4 Financial Protection Agency Act of 2009.”.

5 (g) SECTION 10.—Section 10(d) of the Real Estate
6 Settlement Procedures Act of 1974 (12 U.S.C. 2609(d))
7 is amended by striking “Secretary” and inserting “Agen-
8 cy”.

9 (h) SECTION 16.—Section 16 of the Real Estate Set-
10 tlement Procedures Act of 1974 (12 U.S.C. 2614) is
11 amended by inserting “the Agency,” before “the Sec-
12 retary”.

13 (i) SECTION 18.—Section 18 of the Real Estate Set-
14 tlement Procedures Act of 1974 (12 U.S.C. 2616) is
15 amended by striking “Secretary” each place such term ap-
16 pears and inserting “Agency”.

17 (j) SECTION 19.—Section 19 of the Real Estate Set-
18 tlement Procedures Act of 1974 (12 U.S.C. 2617) is
19 amended—

20 (1) in the section heading, by striking “SEC-
21 RETARY” and inserting “AGENCY”; and

22 (2) by striking “Secretary” each place such
23 term appears and inserting “Agency”.

1 **SEC. 4812. AMENDMENTS TO THE RIGHT TO FINANCIAL**
2 **PRIVACY ACT OF 1978.**

3 (a) AMENDMENTS TO SECTION 1101.—Section 1101
4 of the Right to Financial Privacy Act of 1978 (12 U.S.C.
5 3401) is amended—

6 (1) by striking paragraph (1) and inserting the
7 following new paragraph:

8 “(1) ‘financial institution’ means any bank, sav-
9 ings association, card issuer as defined in section
10 103(n) of the Truth in Lending Act, credit union, or
11 consumer finance institution located in any State or
12 territory of the United States, the District of Colum-
13 bia, Puerto Rico, Guam, American Samoa, or the
14 Virgin Islands;” and

15 (2) in paragraph (7), by inserting after sub-
16 paragraph (A) the following new subparagraph:

17 “(B) the Consumer Financial Protection
18 Agency;”.

19 (b) AMENDMENTS TO SECTION 1112.—Section
20 1112(e) of the Right to Financial Privacy Act of 1978
21 (12 U.S.C. 3412) is amended by striking “and the Com-
22 modity Futures Trading Commission is permitted” and in-
23 serting “the Commodity Futures Trading Commission,
24 and the Consumer Financial Protection Agency is per-
25 mitted”.

1 (c) AMENDMENTS TO SECTION 1113.—Section 1113
 2 of the Right to Financial Privacy Act of 1978 (12 U.S.C.
 3 3413) is amended by adding at the end the following new
 4 subsection—

5 “(r) DISCLOSURE TO THE CONSUMER FINANCIAL
 6 PROTECTION AGENCY.—Nothing in this chapter shall
 7 apply to the examination by or disclosure to the Consumer
 8 Financial Protection Agency of financial records or infor-
 9 mation in the exercise of its authority with respect to a
 10 financial institution.”.

11 **SEC. 4813. AMENDMENTS TO THE SECURE AND FAIR EN-**
 12 **FORCEMENT FOR MORTGAGE LICENSING ACT**
 13 **OF 2008.**

14 (a) SECTION 1503.—Section 1503 of the Secure and
 15 Fair Enforcement for Mortgage Licensing Act of 2008 (12
 16 U.S.C. 5102) is amended—

17 (1) by striking paragraph (9);

18 (2) by redesignating paragraph (1) as para-
 19 graph (4), and transferring paragraph (4) (as so re-
 20 designated) and inserting such paragraph after
 21 paragraph (3) (as added by paragraph (5));

22 (3) by redesignating paragraphs (3), (4), (5),
 23 (6), (7), (8), (10), (11), and (12) as paragraphs (5),
 24 (6), (7), (8), (9), (10), (11), (12), and (13), respec-
 25 tively;

1 (4) by inserting before paragraph (2) the fol-
2 lowing new paragraph:

3 “(1) AGENCY.—The term ‘Agency’ means the
4 Consumer Financial Protection Agency.”; and

5 (5) by inserting after paragraph (2) the fol-
6 lowing new paragraph:

7 “(3) DIRECTOR.—The term ‘Director’ means
8 the Director of the Agency.”.

9 (b) UNIVERSAL AMENDMENTS RELATING TO AGEN-
10 CY.—The Secure and Fair Enforcement for Mortgage Li-
11 censing Act of 2008 (12 U.S.C. 5101 et seq.) is amend-
12 ed—

13 (1) by striking “Federal banking agencies”
14 each place such term appears (other than in sub-
15 section (a)(4) (as so redesignated by subsection (a),
16 relating to the definition of Federal banking agen-
17 cies) or in connection with a reference that is specifi-
18 cally amended by another provision of this section)
19 and inserting “Agency”; and

20 (2) by striking “Secretary” each place such
21 term appears (other than in connection with a ref-
22 erence that is specifically amended by another provi-
23 sion of this section) and inserting “Director”.

1 (c) SECTION 1507.—Section 1507 of the Secure and
2 Fair Enforcement for Mortgage Licensing Act of 2008 (12
3 U.S.C. 5106) is amended—

4 (1) in subsection (a)—

5 (A) by striking paragraph (1) and insert-
6 ing the following new paragraph:

7 “(1) IN GENERAL.—The Agency shall develop
8 and maintain a system for registering employees of
9 any depository institution, employees of a subsidiary
10 that is owned and controlled by a depository institu-
11 tion and regulated by a Federal banking agency, or
12 employees of an institution regulated by the Farm
13 Credit Administration, as registered loan originators
14 with the Nationwide Mortgage Licensing System and
15 Registry. The system shall be implemented before
16 July 30, 2010.”; and

17 (B) by striking “appropriate Federal bank-
18 ing agency and the Farm Credit Administra-
19 tion” in paragraph (2) and inserting “Agency”;
20 and

21 (2) in subsection (b), by striking “Federal
22 banking agencies, through the Financial Institutions
23 Examination Council, and the Farm Credit Adminis-
24 tration” each place such term appears and inserting
25 “Agency”.

1 (d) SECTION 1508.—

2 (1) IN GENERAL.—Section 1508 of the Secure
3 and Fair Enforcement for Mortgage Licensing Act
4 of 2008 (12 U.S.C. 5107) is amended by adding at
5 the end the following new subsection:

6 “(f) REGULATIONS.—

7 “(1) IN GENERAL.—The Agency may prescribe
8 regulations setting minimum net worth or surety
9 bond requirements for residential mortgage loan
10 originators and minimum requirements for recovery
11 funds paid into by loan originators.

12 “(2) FACTORS TAKEN INTO ACCOUNT.—Such
13 regulations shall take into account the need to pro-
14 vide originators adequate incentives to originate af-
15 fordable and sustainable mortgage loans as well as
16 the need to ensure a competitive origination market
17 that maximizes consumers’ access to affordable and
18 sustainable mortgage loans.”.

19 (2) CLERICAL AMENDMENT.—The heading for
20 section 1508 of the Secure and Fair Enforcement
21 for Mortgage Licensing Act of 2008 is amended by
22 striking “**SECRETARY OF HOUSING AND URBAN**
23 **DEVELOPMENT**” and inserting “**CONSUMER FI-**
24 **NANCIAL PROTECTION AGENCY**”.

1 (e) SECTION 1510.—Section 1510 of the Secure and
2 Fair Enforcement for Mortgage Licensing Act of 2008 (12
3 U.S.C. 5109) is amended to read as follows:

4 **“SEC. 1510. FEES.**

5 “The Agency and the Nationwide Mortgage Licensing
6 System and Registry may charge reasonable fees to cover
7 the costs of maintaining and providing access to informa-
8 tion from the Nationwide Mortgage Licensing System and
9 Registry, to the extent that such fees are not charged to
10 consumers for access to such system and registry.”.

11 (f) SECTION 1513.—Section 1513 of the Secure and
12 Fair Enforcement for Mortgage Licensing Act of 2008 (12
13 U.S.C. 5112) is amended to read as follows:

14 **“SEC. 1513. LIABILITY PROVISIONS.**

15 “The Agency, any State official or agency, or any or-
16 ganization serving as the administrator of the Nationwide
17 Mortgage Licensing System and Registry or a system es-
18 tablished by the Director under section 1509, or any offi-
19 cer or employee of any such entity, shall not be subject
20 to any civil action or proceeding for monetary damages
21 by reason of the good faith action or omission of any offi-
22 cer or employee of any such entity, while acting within
23 the scope of office or employment, relating to the collec-
24 tion, furnishing, or dissemination of information con-

cerning persons who are loan originators or are applying
for licensing or registration as loan originators.”.

(g) SECTION 1514.—The heading for section 1514
of the Secure and Fair Enforcement for Mortgage Licens-
ing Act of 2008 (12 U.S.C. 5113) is amended by striking
“**UNDER HUD BACKUP LICENSING SYSTEM**” and in-
serting “**BY THE AGENCY**”.

SEC. 4814. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

(a) SECTION 263.—Section 263 of the Truth in Sav-
ings Act (12 U.S.C. 4302) is amended in subsection (b)
by striking “Board” each place such term appears and
inserting “Agency”.

(b) SECTION 265.—Section 265 of the Truth in Sav-
ings Act (12 U.S.C. 4304) is amended by striking
“Board” each place such term appears and inserting
“Agency”.

(c) SECTION 266.—Section 266(e) of the Truth in
Savings Act is amended (12 U.S.C. 4305) by striking
“Board” and inserting “Agency”.

(d) SECTION 269.—Section 269 of the Truth in Sav-
ings Act (12 U.S.C. 4308) is amended by striking
“Board” each place such term appears and inserting
“Agency”.

(e) SECTION 270.—Section 270 of the Truth in Sav-
ings Act (12 U.S.C. 4309) is amended—

1 (1) in subsection (a)—

2 (A) by striking “Compliance” and insert-
3 ing “Subject to section 4202 of the Consumer
4 Financial Protection Agency Act of 2009, com-
5 pliance”;

6 (B) by striking subparagraph (A) of para-
7 graph (1) and inserting the following new sub-
8 paragraph:

9 “(A) by the head of the agency responsible
10 for chartering and regulating national banks for
11 national banks, and Federal branches and Fed-
12 eral agencies of foreign banks;” and

13 (C) by adding at the end, the following
14 new paragraph:

15 “(3) subtitle E of the Consumer Financial Pro-
16 tection Agency Act of 2009, by the Agency.”; and

17 (2) in subsection (c)—

18 (A) in the subsection heading, by striking
19 “BOARD” and insert “AGENCY”; and

20 (B) by striking “Board” and inserting
21 “Agency”.

22 (f) SECTION 272.—Section 272 of the Truth in Sav-
23 ings Act (12 U.S.C. 4311) is amended—

24 (1) in subsection (a), by striking “Board” and
25 inserting “Agency”; and

1 (2) in subsection (b), by striking “regulation
2 prescribed by the Board” each place such term ap-
3 pears and inserting “regulation prescribed by the
4 Agency”.

5 (g) SECTION 273.—Section 273 of the Truth in Sav-
6 ings Act (12 U.S.C. 4312) is amended in the last sentence
7 by striking “Board” and inserting “Agency”.

8 (h) SECTION 274.—Section 274 of the Truth in Sav-
9 ings Act (12 U.S.C. 4313) is amended—

10 (1) in paragraph (2) by striking “Board” and
11 inserting “Agency”; and

12 (2) by striking paragraph (4) and inserting the
13 following new paragraph:

14 “(4) AGENCY.—The term ‘Agency’ means the
15 Consumer Financial Protection Agency.”.

16 **SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND**
17 **CONSUMER FRAUD ABUSE AND PREVENTION**
18 **ACT.**

19 (a) Section 4 of the Telemarketing and Consumer
20 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
21 amended—

22 (1) in subsection (b)—

23 (A) by inserting “and the Consumer Fi-
24 nancial Protection Agency with respect to a
25 person subject to the authority of that Agency

1 under the Consumer Financial Protection Agen-
2 cy Act” after “Commission” each of the first 2
3 places it appears; and

4 (B) by inserting “or the Consumer Finan-
5 cial Protection Agency” after “Commission” the
6 last place it appears; and

7 (2) in subsection (d), by inserting “or the Con-
8 sumer Financial Protection Agency” after “Commis-
9 sion” each place such term appears.

10 (b) Section 5 of the Telemarketing and Consumer
11 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
12 amended—

13 (1) in subsection (b)—

14 (A) by inserting “and the Consumer Fi-
15 nancial Protection Agency with respect to a
16 person subject to the authority of that Agency
17 under the Consumer Financial Protection Agen-
18 cy Act” after “Commission” each of the first 2
19 places it appears; and

20 (B) by inserting “or the Consumer Finan-
21 cial Protection Agency” after “Commission” the
22 last place it appears; and

23 (2) in subsection (c), by inserting “or the Con-
24 sumer Financial Protection Agency” after “Commis-
25 sion” each place such term appears.

1 (c) Section 6 of the Telemarketing and Consumer
2 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
3 amended by redesignating subsection (c) as subsection (d)
4 and inserting after subsection (b) the following:

5 “(c) ENFORCEMENT BY THE CONSUMER FINANCIAL
6 PROTECTION AGENCY.—Subject to section 4202 of the
7 Consumer Financial Protection Agency Act of 2009, this
8 Act shall be enforced by the Consumer Financial Protec-
9 tion Agency, under subtitle E of that Act, with respect
10 to a person subject to the authority of that Agency under
11 that Act. For the purpose of the exercise by the Consumer
12 Financial Protection Agency of its powers under subtitle
13 E, a violation of any requirement imposed under this Act
14 shall be deemed to be a violation of a requirement imposed
15 under the Consumer Financial Protection Agency Act. In
16 addition to its powers under subtitle E of that Act, the
17 Agency may exercise, for the purpose of enforcing compli-
18 ance with any requirement imposed under this Act, any
19 other authority conferred on it by law.”.

20 **SEC. 4816. MEMBERSHIP IN FINANCIAL LITERACY AND**
21 **EDUCATION COMMISSION.**

22 Section 513(c)(1) of the Financial Literacy and Edu-
23 cation Improvement Act (20 U.S.C. 9702(c)(1)) is amend-
24 ed—

1 (1) in subparagraph (B), by striking “and” at
2 the end;

3 (2) by redesignating subparagraph (C) as sub-
4 paragraph (D); and

5 (3) by inserting after subparagraph (B) the fol-
6 lowing new subparagraph:

7 “(C) the Director of the Consumer Finan-
8 cial Protection Agency; and”.

9 **SEC. 4817. EFFECTIVE DATE.**

10 The amendments made by sections 4803 through
11 4815 shall take effect on the designated transfer date.

12 **SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.**

13 (a) IN GENERAL.—Section 128(e) of the Truth in
14 Lending Act is amended—

15 (1) by striking paragraph (3) and inserting the
16 following new paragraph (3):

17 “(3) INSTITUTIONAL CERTIFICATION RE-
18 QUIRED.—(A) Except as provided in subparagraph
19 (B), before a creditor may issue any funds with re-
20 spect to an extension of credit described in para-
21 graph (1), the creditor shall obtain from the relevant
22 institution of higher education such institution’s cer-
23 tification—

24 “(i) of the enrollment status of the bor-
25 rower;

1 “(ii) of the borrower’s cost of attendance
2 at the institution as determined by the institu-
3 tion under part F of title IV of the Higher
4 Education Act of 1965;

5 “(iii) of the difference between the bor-
6 rower’s cost of attendance and the borrower’s
7 estimated financial assistance received under
8 title IV of the Higher Education Act of 1965
9 and other assistance known to the institution,
10 as applicable; and

11 “(iv) that the institution has—

12 “(I) informed the borrower—

13 “(aa) about the availability of,
14 and the borrower’s potential eligibility
15 for, Federal financial assistance under
16 this title, including disclosing the
17 terms, conditions, and interest rates
18 of Federal student loans;

19 “(bb) of the borrower’s ability to
20 select a private educational lender of
21 the borrower’s choice;

22 “(cc) about the impact of a pro-
23 posed private education loan on the
24 borrowers’ potential eligibility for
25 other financial assistance, including

1 Federal financial assistance under the
2 Higher Education Act of 1965; and

3 “(dd) about a borrower’s right to
4 accept or reject a private education
5 loan within the 30-day period fol-
6 lowing a private educational lender’s
7 approval of a borrower’s application
8 and about a borrower’s 3-day right to
9 cancel altogether;

10 “(II) determined whether the bor-
11 rower has applied for and exhausted the
12 Federal financial assistance available to
13 the borrower under the Higher Education
14 Act of 1965 and informed the borrower ac-
15 cordingly; and

16 “(III) counseled the borrower on the
17 borrower’s financial aid options.

18 “(B) A creditor may issue funds with respect to
19 an extension of credit described in paragraph (1)
20 without obtaining from the relevant institution of
21 higher education such institution’s certification if
22 such institution fails to provide such certification
23 within 21 calendar days or 15 business days, which-
24 ever comes first, of the creditor’s request for such
25 certification.”;

1 (2) by redesignating paragraphs (9), (10), and
2 (11) as paragraphs (10), (11), and (12), respec-
3 tively; and

4 (3) by inserting after paragraph (8) the fol-
5 lowing new paragraph (9):

6 “(9) PROVISION OF INFORMATION.—On or be-
7 fore the date a creditor issues any funds with re-
8 spect to an extension of credit described in para-
9 graph (1), the creditor shall notify the relevant insti-
10 tution of higher education, in writing, of the amount
11 of the extension of credit and the student on whose
12 behalf credit is extended. The form of such written
13 notification shall be subject to the regulations of the
14 Agency.”.

15 (b) REGULATIONS.—

16 (1) DEADLINE FOR REGULATIONS.—Not later
17 than 365 days after the date of enactment of this
18 Act, the Agency shall issue regulations in final form
19 to implement paragraphs (3) and (9) of section
20 128(e) of the Truth in Lending Act, as amended by
21 subsection (a). Such regulations shall become effec-
22 tive not later than 6 months after their date of
23 issuance.

24 (2) EFFECTIVE DATE.—The regulations in ef-
25 fect pursuant to section 128(e) of the Truth in

1 Lending Act as of the date of the enactment of this
2 Act shall remain in effect until the effective date of
3 the regulations issued under paragraph (1).

4 (c) STUDY AND REPORT ON PRIVATE EDUCATION
5 LOANS AND PRIVATE EDUCATIONAL LENDERS.—

6 (1) REPORT.—Not later than 2 years after the
7 date of enactment of this Act, the Director and the
8 Secretary of Education, in consultation with the
9 Commissioners of the Federal Trade Commission,
10 and the Attorney General, shall submit a report to
11 the Committee on Financial Services and the Com-
12 mittee on Education and Labor of the House of
13 Representatives and the Committee on Banking,
14 Housing, and Urban Affairs and the Committee on
15 Health Education, Labor, and Pensions of the Sen-
16 ate on private education loans (as that term is de-
17 fined in section 140 of the Truth in Lending Act (15
18 U.S.C. 1650)) and private educational lenders (as
19 that term is defined in such section).

20 (2) CONTENT.—The report required by this
21 subsection shall examine, at a minimum, the fol-
22 lowing:

23 (A) the growth and changes of the private
24 education loan market in the United States;

1 (B) factors influencing such growth and
2 changes;

3 (C) the extent to which students and par-
4 ents of students rely on private education loans
5 to finance postsecondary education and the pri-
6 vate education loan indebtedness of borrowers;

7 (D) the characteristics of private education
8 loan borrowers, including the types of institu-
9 tions of higher education they attend, socio-
10 economic characteristics (including income and
11 education levels, racial characteristics, geo-
12 graphical background, age, and gender), what
13 other forms of financing borrowers use to pay
14 for education, whether they exhaust their Fed-
15 eral loan options before taking out a private
16 loan, whether such borrowers are dependent or
17 independent students (as determined under part
18 F of title IV of the Higher Education Act of
19 1965) or parents of such students, whether
20 such borrowers are students enrolled in a pro-
21 gram leading to a certificate, license or creden-
22 tial other than a degree, an associates degree,
23 a baccalaureate degree, or a graduate or profes-
24 sional degree and, if practicable, employment
25 and repayment behaviors;

1 (E) the characteristics of private edu-
2 cational lenders, including whether such credi-
3 tors are for-profit, non-profit, or institutions of
4 higher education;

5 (F) the underwriting criteria used by pri-
6 vate educational lenders, including the use of
7 cohort default rate (as such term is defined in
8 section 435(m) of the Higher Education Act of
9 1965);

10 (G) the terms, conditions, and pricing of
11 private education loans;

12 (H) the consumer protections available to
13 private education loan borrowers, including the
14 effectiveness of existing disclosures and require-
15 ments and borrowers' awareness and under-
16 standing about terms and conditions of various
17 financial products;

18 (I) whether Federal regulators and the
19 public have access to information sufficient to
20 provide them with assurances that private edu-
21 cation loans are provided in accord with the
22 Nation's fair lending laws and that allows pub-
23 lic officials to determine lenders' compliance
24 with fair lending laws; and

1 (J) any statutory or legislative rec-
2 ommendations necessary to improve consumer
3 protections for private education loan borrowers
4 and to better enable Federal regulators and the
5 public to ascertain private educational lender
6 compliance with fair lending laws.

7 (d) REPORT.—Not later than 18 months after the
8 issuance of regulations under subsection (b)(1), the Con-
9 sumer Financial Protection Agency and the Secretary of
10 Education shall jointly submit to Congress a report on the
11 compliance of institutions and private educational lenders
12 with the amendments made by this section. The report
13 shall include the degree to which specific institutions uti-
14 lize certifications in effectively encouraging the exhaustion
15 of Federal student loan eligibility and lowering student
16 debt.

17 **Subtitle I—Improvements to the**
18 **Federal Trade Commission Act**

19 **SEC. 4901. AMENDMENTS TO THE FEDERAL TRADE COM-**
20 **MISSION ACT.**

21 (a) Section 5(m)(1)(A) of the Federal Trade Com-
22 mission Act (15 U.S.C. 45(m)(1)(A)) is amended—

23 (1) by inserting “this Act or” after “violates”
24 the first place such term appears;

1 (2) by inserting a comma after “under this
2 Act”;

3 (3) by inserting a comma after “subsection
4 (a)(1))”; and

5 (4) by inserting “a violation of this Act or is”
6 before “prohibited”.

7 (b) Section 5 of the Federal Trade Commission Act
8 (15 U.S.C. 45) is amended by adding at the end thereof
9 the following new subsection:

10 “(o) UNLAWFUL ASSISTANCE.—It is unlawful for any
11 person, partnership, or corporation, knowingly or reck-
12 lessly, to provide substantial assistance to another in vio-
13 lating any provision of this Act or of any other Act en-
14 forceable by the Commission that relates to unfair or de-
15 ceptive acts or practices. Any such violation shall con-
16 stitute an unfair or deceptive act or practice described in
17 section 5(a)(1) of this Act. Nothing in this section shall
18 be construed as limiting or superseding the protection pro-
19 vided to any provider or user qualifying for protection
20 under section 230(c)(1) of the Communications Act of
21 1934 (47 U.S.C. 230(c)(1)).”.

22 (c) Section 18 of the Federal Trade Commission Act
23 (15 U.S.C. 57a) is amended—

24 (1) in subsection (a)(1), by striking “(h)” and
25 inserting “(f)”;

1 (2) by amending subsection (b) to read as fol-
2 lows:

3 “(b) PROCEDURE APPLICABLE.—When prescribing a
4 rule under subsection (a)(1)(B) of this section, the Com-
5 mission shall proceed in accordance with section 553 of
6 title 5.”;

7 (3) by striking subsection (c);

8 (4) in subsection (d), by striking “(d)(1) The
9 Commission’s” and all that follows through the end
10 of paragraph (2) and by redesignating paragraph (3)
11 of such subsection as subsection (c);

12 (5) In such subsection (c) (as so redesignated),
13 by inserting “prescribed” after “any rule”;

14 (6) by striking subsections (f), (i), and (j) and
15 redesignating subsections (e), (g), and (h) as sub-
16 sections (d), (e), and (f), respectively;

17 (7) in subsection (c) (as redesignated), by in-
18 serting “prescribed” after “rule”; and

19 (8) in subsection (d) (as redesignated)—

20 (A) in paragraph (1)(A) by striking “pro-
21 mulgated” and inserting “prescribed”;

22 (B) in paragraph (1)(B), by striking “the
23 transcript required by subsection (c)(5),”;

1 (C) in paragraph (3), by striking “The
2 court shall hold unlawful” and all that follows
3 through the end of the paragraph; and

4 (D) by striking paragraphs (4) and (5)
5 and inserting the following:

6 “(4) The procedure set forth in this subsection for
7 judicial review of a rule prescribed under subsection
8 (a)(1)(B) is the exclusive means for such review, other
9 than in an enforcement proceeding.”; and

10 (9) in subsection (e)(2) (as so redesignated), by
11 striking “class or persons” and inserting “class of
12 persons”.

13 (d) Section 16(a)(2) of the Federal Trade Commis-
14 sion Act (15 U.S.C. 56(a)(2)) is amended—

15 (1) in subparagraph (D), by striking “; or” and
16 inserting a semicolon; and

17 (2) by inserting after subparagraph (E) the fol-
18 lowing:

19 “(F) to obtain a civil penalty authorized
20 under any provision of law enforced by the
21 Commission.”.

22 (e) Section 5(l) of the Federal Trade Commission Act
23 (15 U.S.C. 45(l)) is amended in the first sentence by in-
24 serting “the Commission or” after “brought by”.

1 **Subtitle J—Miscellaneous**

2 **SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN**
3 **ORIGINATORS.**

4 Paragraph (2) of section 1505 (b) of the S.A.F.E.
5 Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2))
6 is amended by inserting after and below subparagraph
7 (B), the following:

8 “Notwithstanding the preceding sentence, a State
9 loan originator supervisory authority may provide
10 for review of applicants and for granting exceptions,
11 on a case-by-case basis, to the minimum standard
12 under subparagraph (B), but only to the extent that
13 any such exception otherwise complies with the pur-
14 poses of this title.”.

15 **TITLE V—CAPITAL MARKETS**
16 **Subtitle A—Private Fund Invest-**
17 **ment Advisers Registration Act**

18 **SEC. 5001. SHORT TITLE.**

19 This subtitle may be cited as the “Private Fund In-
20 vestment Advisers Registration Act of 2009”.

21 **SEC. 5002. DEFINITIONS.**

22 Section 202(a) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the
24 end the following new paragraphs:

1 “(29) PRIVATE FUND.—The term ‘private fund’
2 means an issuer that would be an investment com-
3 pany under section 3(a) of the Investment Company
4 Act of 1940 (15 U.S.C. 80a–3(a)) but for the excep-
5 tion provided from that definition by either section
6 3(c)(1) or section 3(c)(7) of such Act.

7 “(30) FOREIGN PRIVATE FUND ADVISER.—The
8 term ‘foreign private fund adviser’ means an invest-
9 ment adviser who—

10 “(A) has no place of business in the
11 United States;

12 “(B) during the preceding 12 months has
13 had—

14 “(i) in total, fewer than 15 clients and
15 investors in the United States in private
16 funds advised by the investment adviser;
17 and

18 “(ii) aggregate assets under manage-
19 ment attributable to clients and investors
20 in the United States in private funds ad-
21 vised by the investment adviser of less
22 than \$25,000,000, or such higher amount
23 as the Commission may, by rule, deem ap-
24 propriate in the public interest or for the
25 protection of investors; and

“(C) neither holds itself out generally to the public in the United States as an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53) and has not withdrawn such election.”.

**SEC. 5003. ELIMINATION OF PRIVATE ADVISER EXEMPTION;
LIMITED EXEMPTION FOR FOREIGN PRIVATE
FUND ADVISERS; LIMITED INTRASTATE EX-
EMPTION.**

(a) EXEMPTION.—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (1), by inserting “, except an investment adviser who acts as an investment adviser to any private fund,” after “any investment adviser”;

(2) by amending paragraph (3) to read as follows:

“(3) any investment adviser that is a foreign private fund adviser;”;

(3) in paragraph (5), by striking “or” at the end;

1 (4) in paragraph (6)—

2 (A) in subparagraph (A), by striking “or”;

3 (B) in subparagraph (B), by striking the
4 period at the end and adding “; or”; and

5 (C) by adding at the end the following new
6 subparagraph:

7 “(C) a private fund; or”; and

8 (5) by adding at the end the following:

9 “(7) any investment adviser who solely ad-
10 vises—

11 “(A) small business investment companies
12 licensed under the Small Business Investment
13 Act of 1958;

14 “(B) entities that have received from the
15 Small Business Administration notice to pro-
16 ceed to qualify for a license, which notice or li-
17 cense has not been revoked; or

18 “(C) applicants, related to one or more li-
19 censed small business investment companies
20 covered in subparagraph (A), that have applied
21 for another license, which application remains
22 pending.”.

23 (b) CONSIDERATION OF RISK.—Section 203(c) of the
24 Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)) is
25 amended by adding at the end the following:

1 “(3) The Commission shall take into account
2 the relative risk profile of different classes of private
3 funds as it establishes, by rule or regulation, the
4 registration requirements for private funds.”.

5 **SEC. 5004. COLLECTION OF DATA.**

6 Section 204 of the Investment Advisers Act of 1940
7 (15 U.S.C. 80b–4) is amended—

8 (1) by redesignating subsections (b) and (c) as
9 subsection (c) and (d), respectively; and

10 (2) by inserting after subsection (a) the fol-
11 lowing new subsection:

12 “(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

13 “(1) IN GENERAL.—The Commission is author-
14 ized to require any investment adviser registered
15 under this Act to maintain such records of and file
16 with the Commission such reports regarding private
17 funds advised by the investment adviser as are nec-
18 essary or appropriate in the public interest and for
19 the protection of investors or for the assessment of
20 systemic risk as the Commission determines in con-
21 sultation with the Board of Governors of the Federal
22 Reserve System. The Commission is authorized to
23 provide or make available to the Board of Governors
24 of the Federal Reserve System and to the Financial
25 Services Oversight Council, those reports or records

1 or the information contained therein. The records
2 and reports of any private fund, to which any such
3 investment adviser provides investment advice, main-
4 tained or filed by an investment adviser registered
5 under this Act, shall be deemed to be the records
6 and reports of the investment adviser.

7 “(2) REQUIRED INFORMATION.—The records
8 and reports required to be maintained or filed with
9 the Commission under this subsection shall include,
10 for each private fund advised by the investment ad-
11 viser—

12 “(A) the amount of assets under manage-
13 ment;

14 “(B) the use of leverage (including off-bal-
15 ance sheet leverage);

16 “(C) counterparty credit risk exposures;

17 “(D) trading and investment positions;

18 “(E) trading practices; and

19 “(F) such other information as the Com-
20 mission, in consultation with the Board of Gov-
21 ernors of the Federal Reserve System, deter-
22 mines necessary or appropriate in the public in-
23 terest and for the protection of investors or for
24 the assessment of systemic risk.

1 “(3) OPTIONAL INFORMATION.—The Commis-
2 sion may require the reporting of such additional in-
3 formation from private fund advisers as the Com-
4 mission determines necessary. In making such deter-
5 mination, the Commission, taking into account the
6 public interest and potential to contribute to sys-
7 temic risk, may set different reporting requirements
8 for different classes of private fund advisers, based
9 on the particular types or sizes of private funds ad-
10 vised by such advisers.

11 “(4) MAINTENANCE OF RECORDS.—An invest-
12 ment adviser registered under this Act is required to
13 maintain and keep such records of private funds ad-
14 vised by the investment adviser for such period or
15 periods as the Commission, by rule or regulation,
16 may prescribe as necessary or appropriate in the
17 public interest and for the protection of investors or
18 for the assessment of systemic risk.

19 “(5) EXAMINATION OF RECORDS.—

20 “(A) PERIODIC AND SPECIAL EXAMINA-
21 TIONS.—All records of a private fund main-
22 tained by an investment adviser registered
23 under this Act shall be subject at any time and
24 from time to time to such periodic, special, and
25 other examinations by the Commission, or any

1 member or representative thereof, as the Com-
2 mission may prescribe.

3 “(B) AVAILABILITY OF RECORDS.—An in-
4 vestment adviser registered under this Act shall
5 make available to the Commission or its rep-
6 resentatives any copies or extracts from such
7 records as may be prepared without undue ef-
8 fort, expense, or delay as the Commission or its
9 representatives may reasonably request.

10 “(6) INFORMATION SHARING.—The Commission
11 shall make available to the Board of Governors of
12 the Federal Reserve System and to the Financial
13 Services Oversight Council, copies of all reports, doc-
14 uments, records, and information filed with or pro-
15 vided to the Commission by an investment adviser
16 under this subsection as the Board, or the Financial
17 Services Oversight Council, may consider necessary
18 for the purpose of assessing the systemic risk of a
19 private fund. All such reports, documents, records,
20 and information obtained by the Board, or such
21 other entity, from the Commission under this sub-
22 section shall be kept confidential in a manner con-
23 sistent with confidentiality established by the Com-
24 mission pursuant to paragraph (8).

1 “(7) DISCLOSURES OF CERTAIN PRIVATE FUND
2 INFORMATION.—An investment adviser registered
3 under this Act shall provide such reports, records,
4 and other documents to investors, prospective inves-
5 tors, counterparties, and creditors, of any private
6 fund advised by the investment adviser as the Com-
7 mission, by rule or regulation, may prescribe as nec-
8 essary or appropriate in the public interest and for
9 the protection of investors or for the assessment of
10 systemic risk.

11 “(8) APPLICABLE PRIVILEGES NOT WAIVED.—
12 An investment advisor, and investment advisor to a
13 private fund, a private fund, foreign private fund ad-
14 visor, a foreign private fund, an advisor to a venture
15 capital fund, a venture capital fund, or other person
16 shall not be compelled to waive and shall not be
17 deemed to have waived any privilege otherwise appli-
18 cable to any data or information by transferring the
19 data or information to, or permitting that data or
20 information to be used by—

21 “(A) the Financial Services Oversight
22 Council;

23 “(B) the Commission;

24 “(C) any Federal financial regulator or
25 State financial regulator, in any capacity; or

1 “(D) any other agency of the Federal Gov-
2 ernment (as defined in section 6 of title 18,
3 United States Code).

4 “(9) NON-DISCLOSURE OF CERTAIN PROPRI-
5 ETARY INFORMATION AND CONFIDENTIALITY OF RE-
6 PORTS.—Any proprietary information of an invest-
7 ment adviser ascertained by the Commission from
8 any report required to be filed with the Commission
9 pursuant to this section 204(b) shall be subject to
10 the same limitations on public disclosure as any
11 facts ascertained during an examination as provided
12 by section 210(b) of this title. The Commission may
13 not compel the private fund to disclose such propri-
14 etary information to counterparties and creditors.
15 For purposes of this section, proprietary information
16 shall include sensitive, non-public information re-
17 garding the investment adviser’s investment or trad-
18 ing strategies, analytical or research methodologies,
19 trading data, computer hardware or software con-
20 taining intellectual property, and any additional in-
21 formation that the Commission determines to be
22 proprietary. Notwithstanding any other provision of
23 law, the Commission shall not be compelled to dis-
24 close any report or information contained therein re-
25 quired to be filed with the Commission under this

1 subsection. Nothing in this paragraph shall author-
2 ize the Commission to withhold information from the
3 Congress or to prevent the Commission from com-
4 plying with a request for information from any other
5 Federal department or agency or any self-regulatory
6 organization requesting the report or information for
7 purposes within the scope of its jurisdiction, or com-
8 plying with an order of a court of the United States
9 in an action brought by the United States or the
10 Commission. For purposes of section 552 of title 5,
11 United States Code, this paragraph shall be consid-
12 ered a statute described in subsection (b)(3)(B) of
13 such section.”.

14 **SEC. 5005. ELIMINATION OF DISCLOSURE PROVISION.**

15 Section 210 of the Investment Advisers Act of 1940
16 (15 U.S.C. 80b–10) is amended by striking subsection (c).

17 **SEC. 5006. EXEMPTION OF AND REPORTING BY VENTURE**
18 **CAPITAL FUND ADVISERS.**

19 Section 203 of the Investment Advisers Act of 1940
20 (15 U.S.C. 80b–3) is amended by adding at the end the
21 following new subsection:

22 “(l) EXEMPTION OF AND REPORTING BY VENTURE
23 CAPITAL FUND ADVISERS.—The Commission shall iden-
24 tify and define the term ‘venture capital fund’ and shall
25 provide an adviser to such a fund an exemption from the

1 registration requirements under this section (excluding
2 any such fund whose adviser is exempt from registration
3 pursuant to paragraph (7) of subsection (b)). The Com-
4 mission shall require such advisers to maintain such
5 records and provide to the Commission such annual or
6 other reports as the Commission determines necessary or
7 appropriate in the public interest or for the protection of
8 investors.”.

9 **SEC. 5007. EXEMPTION OF AND REPORTING BY CERTAIN**
10 **PRIVATE FUND ADVISERS.**

11 Section 203 of the Investment Advisers Act of 1940
12 (15 U.S.C. 80b–3), as amended by section 5006, is further
13 amended by adding at the end the following new sub-
14 sections:

15 “(m) EXEMPTION OF AND REPORTING BY CERTAIN
16 PRIVATE FUND ADVISERS.—

17 “(1) IN GENERAL.—The Commission shall pro-
18 vide an exemption from the registration require-
19 ments under this section to any investment adviser
20 of private funds, if each of such investment adviser
21 acts solely as an adviser to private funds and has as-
22 sets under management in the United States of less
23 than \$150,000,000.

24 “(2) REPORTING.—The Commission shall re-
25 quire investment advisers exempted by reason of this

1 subsection to maintain such records and provide to
2 the Commission such annual or other reports as the
3 Commission determines necessary or appropriate in
4 the public interest or for the protection of investors.

5 “(n) REGISTRATION AND EXAMINATION OF MID-
6 SIZED PRIVATE FUND ADVISERS.—In prescribing regula-
7 tions to carry out the requirements of this section with
8 respect to investment advisers acting as investment advis-
9 ers to mid-sized private funds, the Commission shall take
10 into account the size, governance, and investment strategy
11 of such funds to determine whether they pose systemic
12 risk, and shall provide for registration and examination
13 procedures with respect to the investment advisers of such
14 funds which reflect the level of systemic risk posed by such
15 funds.”.

16 **SEC. 5008. CLARIFICATION OF RULEMAKING AUTHORITY.**

17 Section 211 of the Investment Advisers Act of 1940
18 (15 U.S.C. 80b–11) is amended—

19 (1) by amending subsection (a) to read as fol-
20 lows:

21 “(a) The Commission shall have authority from time
22 to time to make, issue, amend, and rescind such rules and
23 regulations and such orders as are necessary or appro-
24 priate to the exercise of the functions and powers con-
25 ferred upon the Commission elsewhere in this title, includ-

1 ing rules and regulations defining technical, trade, and
2 other terms used in this title. For the purposes of its rules
3 and regulations, the Commission may—

4 “(1) classify persons and matters within its ju-
5 risdiction based upon, but not limited to—

6 “(A) size;

7 “(B) scope;

8 “(C) business model;

9 “(D) compensation scheme; or

10 “(E) potential to create or increase sys-
11 temic risk;

12 “(2) prescribe different requirements for dif-
13 ferent classes of persons or matters; and

14 “(3) ascribe different meanings to terms (in-
15 cluding the term ‘client’, except the Commission
16 shall not ascribe a meaning to the term ‘client’ that
17 would include an investor in a private fund managed
18 by an investment adviser, where such private fund
19 has entered into an advisory contract with such ad-
20 viser) used in different sections of this title as the
21 Commission determines necessary to effect the pur-
22 poses of this title.”; and

23 (2) by adding at the end the following new sub-
24 section:

1 “(e) The Commission and the Commodity Futures
2 Trading Commission shall, after consultation with the
3 Board of Governors of the Federal Reserve System, within
4 12 months after the date of enactment of the Private
5 Fund Investment Advisers Registration Act of 2009, joint-
6 ly promulgate rules to establish the form and content of
7 the reports required to be filed with the Commission under
8 sections 203(l), 203(m), and 204(b) and with the Com-
9 modity Futures Trading Commission by investment advis-
10 ers that are registered both under the Investment Advisers
11 Act of 1940 (15 U.S.C. 80b–1 et seq.) and the Commodity
12 Exchange Act (7 U.S.C. 1 et seq.).”.

13 **SEC. 5009. GAO STUDY.**

14 (a) STUDY REQUIRED.—The Comptroller General of
15 the United States shall carry out a study to assess the
16 annual costs on industry members and their investors due
17 to the registration requirements and ongoing reporting re-
18 quirements under this subtitle and the amendments made
19 by this subtitle.

20 (b) REPORT TO THE CONGRESS.—Not later than the
21 end of the 2-year period beginning on the date of the en-
22 actment of this title, the Comptroller General of the
23 United States shall submit a report to the Congress con-
24 taining the findings and determinations made by the

1 Comptroller General in carrying out the study required
2 under subsection (a).

3 **SEC. 5010. EFFECTIVE DATE; TRANSITION PERIOD.**

4 (a) EFFECTIVE DATE.—This subtitle, and the
5 amendments made by this subtitle, shall take effect with
6 respect to investment advisers after the end of the 1-year
7 period beginning on the date of the enactment of this title.

8 (b) TRANSITION PERIOD.—The Securities and Ex-
9 change Commission shall prescribe rules and regulations
10 to the extent necessary to permit an investment adviser
11 who will be required to register with the Securities and
12 Exchange Commission by reason of this subtitle with the
13 option of registering with the Securities and Exchange
14 Commission before the date described under subsection
15 (a).

16 **SEC. 5011. QUALIFIED CLIENT STANDARD.**

17 Section 205(e) of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–5(e)) is amended by adding at the
19 end the following: “With respect to any factor used in any
20 rule or regulation by the Commission in making a deter-
21 mination under this subsection, if the Commission uses
22 a dollar amount test in connection with such factor, such
23 as a net asset threshold, the Commission shall, by order,
24 not later than 1 year after the date of the enactment of
25 the Private Fund Investment Advisers Registration Act of

1 2009, and every 5 years thereafter, adjust for the effects
2 of inflation on such test. Any such adjustment that is not
3 a multiple of \$100,000 shall be rounded to the nearest
4 multiple of \$100,000.”.

5 **Subtitle B—Accountability and**
6 **Transparency in Rating Agen-**
7 **cies Act**

8 **SEC. 6001. SHORT TITLE.**

9 This subtitle may be cited as the “Accountability and
10 Transparency in Rating Agencies Act of 2009”.

11 **SEC. 6002. ENHANCED REGULATION OF NATIONALLY REC-**
12 **OGNIZED STATISTICAL RATING ORGANIZA-**
13 **TIONS.**

14 (a) IN GENERAL.—Section 15E of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78o–7) is amended—

16 (1) in subsection (a)—

17 (A) by amending paragraph (1)(A) to read
18 as follows:

19 “(A) IN GENERAL.—Each credit rating
20 agency shall register as a nationally recognized
21 statistical rating organization for the purposes
22 of this title (in this section referred to as the
23 ‘applicant’), and shall file with the Commission
24 an application for registration, in such form as
25 the Commission shall require, by rule or regula-

tion issued in accordance with subsection (n),
and containing the information described in
subparagraph (B).”.

(B) in paragraph (2)(A), by striking “furnished to” and inserting “filed with”;

(C) in paragraph (2)(B)(i)(II), by striking
“furnished to” and inserting “filed with”; and

(D) by adding at the end of paragraph (1)
the following:

“(F) EXEMPTIONS.—The registration requirement in subparagraph (A) shall not apply to—

“(i) a credit rating agency if the credit rating agency—

“(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and

“(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

“(ii) such other persons as the Commission may designate by rules and regula-

1 tions or order when in the public interest
2 and for the protection of investors.”.

3 (2) in subsection (b)—

4 (A) in paragraph (1)(A), by striking “fur-
5 nished” and inserting “filed” and by striking
6 “furnishing” and inserting “filing”;

7 (B) in paragraph (1)(B), by striking “fur-
8 nishing” and inserting “filing”; and

9 (C) in the first sentence of paragraph (2),
10 by striking “furnish to” and inserting “file
11 with”;

12 (3) in subsection (c)—

13 (A) paragraph (2)—

14 (i) in the second sentence by inserting
15 “including the requirements of this sec-
16 tion,” after “Notwithstanding any other
17 provision of law,”; and

18 (ii) by inserting before the period at
19 the end of the last sentence “, provided
20 that this paragraph does not afford a de-
21 fense against any action or proceeding
22 brought by the Commission to enforce the
23 antifraud provision of the securities laws”;

24 (B) by adding at the end the following new
25 paragraph:

1 “(3) REVIEW OF INTERNAL PROCESSES FOR
2 DETERMINING CREDIT RATINGS.—

3 “(A) IN GENERAL.—The Commission shall
4 examine credit ratings issued by, and the poli-
5 cies, procedures, and methodologies employed
6 by, each nationally recognized statistical rating
7 organization to review whether—

8 “(i) the nationally recognized statis-
9 tical rating organization has established
10 and documented a system of internal con-
11 trols, due diligence and implementation of
12 methodologies for determining credit rat-
13 ings, taking into consideration such factors
14 as the Commission may prescribe by rule;

15 “(ii) the nationally recognized statis-
16 tical rating organization adheres to such
17 system; and

18 “(iii) the public disclosures of the na-
19 tionally recognized statistical rating orga-
20 nization required under this section about
21 its credit ratings, methodologies, and pro-
22 cedures are consistent with such system.

23 “(B) MANNER AND FREQUENCY.—The
24 Commission shall conduct reviews required by
25 this paragraph no less frequently than annually

1 in a manner to be determined by the Commis-
2 sion.

3 “(4) PROVISION OF INFORMATION TO THE COM-
4 MISSION.—Each nationally recognized statistical rat-
5 ing organization shall make available and maintain
6 such records and information, for such a period of
7 time, as the Commission may prescribe, by rule, as
8 necessary for the Commission to conduct the reviews
9 under paragraph (3).

10 “(5) DISCLOSURES WITH RESPECT TO STRUC-
11 TURED SECURITIES.—

12 “(A) REGULATIONS REQUIRED.—The rules
13 and regulations prescribed by the Commission
14 pursuant to this section with respect to nation-
15 ally recognized statistical rating organizations
16 shall, with respect to disclosure of the proce-
17 dures and methodologies by which any nation-
18 ally recognized statistical rating organization
19 determines credit ratings for structured securi-
20 ties—

21 “(i) specify the information required
22 to be disclosed to such rating organizations
23 by the sponsor, issuers, and underwriters
24 of such structured securities on the collat-

1 eral underlying such structured securities;
2 and

3 “(ii) establish and implement proce-
4 dures to collect and disclose information
5 about the processes used by such sponsor,
6 issuers, and underwriters to assess the ac-
7 curacy and integrity of their data and
8 fraud detection.

9 “(B) DEFINITION.—For purposes of this
10 paragraph, the Commission shall, by rule or
11 regulation, define the term ‘structured securi-
12 ties’ as appropriate in the public interest and
13 for the protection of investors.

14 “(6) HISTORICAL DEFAULT RATE DISCLO-
15 SURES.—The rules and regulations prescribed by the
16 Commission pursuant to this section with respect to
17 nationally recognized statistical rating organizations
18 shall require each nationally recognized statistical
19 rating organization to establish and maintain, on a
20 publicly accessible Internet site, a facility to disclose,
21 in a central database, the historical default rates of
22 all classes of financial products rated by such orga-
23 nization.”;

24 (4) in subsection (d)—

1 (A) in the heading, by inserting “FINE,”
2 after “CENSURE,”;

3 (B) by striking “shall censure” and all
4 that follows through “revocation” and inserting
5 the following: “shall censure, fine in accordance
6 with section 21B(a), place limitations on the ac-
7 tivities, functions, or operations of, suspend for
8 a period not exceeding 12 months, or revoke the
9 registration of any nationally recognized statis-
10 tical rating organization (or with respect to any
11 person who is associated, who is seeking to be-
12 come associated, or, at the time of the alleged
13 misconduct, who was associated or was seeking
14 to become associated with a nationally recog-
15 nized statistical rating organization, the Com-
16 mission, by order, shall censure, fine in accord-
17 ance with section 21B(a), place limitations on
18 the activities or functions of such person, sus-
19 pend for a period not exceeding 12 months, or
20 bar such person from being associated with a
21 nationally recognized statistical rating organiza-
22 tion), if the Commission finds, on the record
23 after notice and opportunity for hearing, that
24 such censure, fine, placing of limitations, bar,
25 suspension, or revocation”;

1 (C) in paragraph (2), by striking “fur-
2 nished to” and inserting “filed with”;

3 (D) in paragraph (4)—

4 (i) by striking “furnish” and inserting
5 “file”; and

6 (ii) by striking “or” at the end;

7 (E) in paragraph (5), by striking the pe-
8 riod at the end and inserting a semicolon; and

9 (F) by adding at the end the following:

10 “(6) has failed reasonably to supervise another
11 person who commits a violation of the securities
12 laws, the rules or regulations thereunder, or any
13 rules of the Municipal Securities Rulemaking Board
14 if such other person is subject to his or her super-
15 vision, except that no person shall be deemed to have
16 failed reasonably to supervise any other person
17 under this paragraph, if—

18 “(A) there have been established proce-
19 dures, and a system for applying such proce-
20 dures, which would reasonably be expected to
21 prevent and detect, insofar as practicable, any
22 such violation by such other person; and

23 “(B) such person has reasonably dis-
24 charged the duties and obligations incumbent
25 upon him or her by reason of such procedures

1 and system without reasonable cause to believe
2 that such procedures and system were not being
3 complied with; or

4 “(7) fails to conduct sufficient surveillance to
5 ensure that credit ratings remain current, as appli-
6 cable.”;

7 (5) in subsection (e), by striking paragraph (1)
8 and inserting the following new paragraph (1):

9 “(1) VOLUNTARY WITHDRAWAL.—A nationally
10 recognized statistical rating organization may, upon
11 such terms and conditions as the Commission may
12 establish as necessary in the public interest or for
13 the protection of investors, withdraw from registra-
14 tion by furnishing a written notice of withdrawal to
15 the Commission, provided that such nationally recog-
16 nized statistical rating organization certifies that it
17 received less than \$250,000,000 during its last full
18 fiscal year in net revenue for providing credit ratings
19 on securities and money market instruments issued
20 in the United States.”;

21 (6) by amending subsection (h) to read as fol-
22 lows:

23 “(h) CORPORATE GOVERNANCE, ORGANIZATION, AND
24 MANAGEMENT OF CONFLICTS OF INTEREST.—

25 “(1) BOARD OF DIRECTORS.—

1 “(A) IN GENERAL.—Each nationally recog-
2 nized statistical rating organization shall have a
3 board of directors.

4 “(B) INDEPENDENT DIRECTORS.—At least
5 $\frac{1}{3}$ of such board, but no less than 2 of the
6 members of the board of directors, shall be
7 independent directors. In order to be considered
8 independent for purposes of this subsection, a
9 director of a nationally recognized statistical
10 rating organization may not, other than in his
11 or her capacity as a member of the board of di-
12 rectors or any committee thereof—

13 “(i) accept any consulting, advisory,
14 or other compensatory fee from the nation-
15 ally recognized statistical rating organiza-
16 tion; or

17 “(ii) be a person associated with the
18 nationally recognized statistical rating or-
19 ganization or with any affiliated company
20 thereof.

21 “(C) COMPENSATION AND TERM.—The
22 compensation of the independent directors shall
23 not be linked to the business performance of the
24 nationally recognized statistical rating organiza-
25 tion and shall be arranged so as to ensure the

1 independence of their judgment. The term of
2 office of the independent directors shall be for
3 a pre-agreed fixed period not exceeding 5 years
4 and shall not be renewable.

5 “(D) DUTIES.—In addition to the overall
6 responsibility of the board of directors, the
7 board shall oversee—

8 “(i) the establishment, maintenance,
9 and enforcement of policies and procedures
10 for determining credit ratings;

11 “(ii) the establishment, maintenance,
12 and enforcement of policies and procedures
13 to address, manage, and disclose any con-
14 flicts of interest;

15 “(iii) the effectiveness of the internal
16 control system with respect to policies and
17 procedures for determining credit ratings;
18 and

19 “(iv) the compensation and promotion
20 policies and practices of the nationally rec-
21 ognized statistical rating organization.

22 “(2) ORGANIZATION POLICIES AND PROCE-
23 DURES.—Each nationally recognized statistical rat-
24 ing organization shall establish, maintain, and en-
25 force written policies and procedures reasonably de-

1 signed, taking into consideration the nature of the
2 business of the nationally recognized statistical rat-
3 ing organization and affiliated persons and affiliated
4 companies thereof, to address, manage, and disclose
5 any conflicts of interest that can arise from such
6 business.

7 “(3) COMMISSION RULES.—The Commission
8 shall issue rules to prohibit, or require the manage-
9 ment and disclosure of, any conflicts of interest re-
10 lating to the issuance of credit ratings by a nation-
11 ally recognized statistical rating organization, includ-
12 ing rules regarding—

13 “(A) conflicts of interest relating to the
14 manner in which a nationally recognized statis-
15 tical rating organization is compensated by the
16 obligor, or any affiliate of the obligor, for
17 issuing credit ratings or providing related serv-
18 ices;

19 “(B) conflicts of interest relating to busi-
20 ness relationships, ownership interests, and af-
21 filiations of nationally recognized statistical rat-
22 ing organization board members with obligors,
23 or any other financial or personal interests be-
24 tween a nationally recognized statistical rating
25 organization, or any person associated with

1 such nationally recognized statistical rating or-
2 ganization, and the obligor, or any affiliate of
3 the obligor;

4 “(C) conflicts of interest relating to any af-
5 filiation of a nationally recognized statistical
6 rating organization, or any person associated
7 with such nationally recognized statistical rat-
8 ing organization, with any person who under-
9 writes securities, money market instruments, or
10 other instruments that are the subject of a
11 credit rating;

12 “(D) a requirement that each nationally
13 recognized statistical rating organization dis-
14 close on such organization’s website a consoli-
15 dated report at the end of each fiscal year that
16 shows—

17 “(i) the percent of net revenue earned
18 by the nationally recognized statistical rat-
19 ing organization or an affiliate of a nation-
20 ally recognized statistical rating organiza-
21 tion, or any person associated with a na-
22 tionally recognized statistical rating orga-
23 nization, to the extent determined appro-
24 priate by the Commission, for that fiscal
25 year for providing services and products

1 other than credit rating services to each
2 person who paid for a credit rating; and

3 “(ii) the relative standing of each per-
4 son who paid for a credit rating that was
5 outstanding as of the end of the fiscal year
6 in terms of the amount of net revenue
7 earned by the nationally recognized statis-
8 tical rating organization attributable to
9 each such person and classified by the
10 highest 5, 10, 25, and 50 percentiles and
11 lowest 50 and 25 percentiles;

12 “(E) the establishment of a system of pay-
13 ment for credit ratings issued by each nation-
14 ally recognized statistical rating organization
15 that requires that payments are structured in a
16 manner designed to ensure that the nationally
17 recognized statistical rating organization con-
18 ducts accurate and reliable surveillance of credit
19 ratings over time, as applicable, and that incen-
20 tives for reliable credit ratings are in place;

21 “(F) a requirement that a nationally rec-
22 ognized statistical rating organization disclose
23 with the publication of a credit rating the type
24 and number of credit ratings it has provided to
25 the person being rated or affiliates of such per-

son, the fees it has billed for the credit rating, and the aggregate amount of net revenue earned by the nationally recognized statistical rating organization in the preceding 2 fiscal years attributable to the person being rated and its affiliates; and

“(G) any other potential conflict of interest, as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

“(4) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY THE NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—

Each nationally recognized statistical rating organization shall establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the nationally recognized statistical rating organization or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the nationally recognized statistical rating organization was employed by the nationally recognized statistical rating organization and participated in any capacity in deter-

1 mining credit ratings for the person or the se-
2 curities or money market instruments during
3 the 1-year period preceding the date an action
4 was taken with respect to the credit rating, the
5 nationally recognized statistical rating organiza-
6 tion shall—

7 “(i) conduct a review to determine
8 whether any conflicts of interest of the em-
9 ployee influenced the credit rating; and

10 “(ii) take action to revise the rating if
11 appropriate, in accordance with such rules
12 as the Commission shall prescribe.

13 “(B) REVIEW BY COMMISSION.—

14 “(i) IN GENERAL.—The Commission
15 shall conduct periodic reviews of the poli-
16 cies described in subparagraph (A) and the
17 implementation of the policies at each na-
18 tionally recognized statistical rating orga-
19 nization to ensure they are reasonably de-
20 signed and implemented to most effectively
21 eliminate conflicts of interest.

22 “(ii) TIMING OF REVIEWS.—The Com-
23 mission shall review the code of ethics and
24 conflict of interest policy of each nationally
25 recognized statistical rating organization—

1 “(I) not less frequently than an-
2 nually; and

3 “(II) whenever such policies are
4 materially modified or amended.

5 “(5) REPORT TO COMMISSION ON CERTAIN EM-
6 PLOYMENT TRANSITIONS.—

7 “(A) REPORT REQUIRED.—Each nationally
8 recognized statistical rating organization shall
9 report to the Commission any case such organi-
10 zation knows or can reasonably be expected to
11 know where a person associated with such orga-
12 nization within the previous 5 years obtains em-
13 ployment with any obligor, issuer, underwriter,
14 or sponsor of a security or money market in-
15 strument for which the organization issued a
16 credit rating during the 12-month period prior
17 to such employment, if such employee—

18 “(i) was a senior officer of such orga-
19 nization;

20 “(ii) participated in any capacity in
21 determining credit ratings for such obligor,
22 issuer, underwriter, or sponsor; or

23 “(iii) supervised an employee de-
24 scribed in clause (ii).

1 “(B) PUBLIC DISCLOSURE.—Upon receiv-
2 ing such a report, the Commission shall make
3 such information publicly available.”;

4 (7) by amending subsection (j) to read as fol-
5 lows:

6 “(j) DESIGNATION OF COMPLIANCE OFFICER.—

7 “(1) IN GENERAL.—Each nationally recognized
8 statistical rating organization shall designate an in-
9 dividual to serve as a compliance officer.

10 “(2) DUTIES.—The compliance officer shall—

11 “(A) report directly to the board of the na-
12 tionally recognized statistical rating organiza-
13 tion;

14 “(B) review compliance with policies and
15 procedures to manage conflicts of interest and
16 assess the risk that the compliance (or lack of
17 such compliance) may compromise the integrity
18 of the credit rating process;

19 “(C) review compliance with the internal
20 control system with respect to the procedures
21 and methodologies for determining credit rat-
22 ings, including qualitative methodologies and
23 quantitative inputs used in the rating process,
24 and assess the risk that such internal control

1 system is reasonably designed to ensure the in-
2 tegrity and quality of the credit rating process;

3 “(D) in consultation with the board of the
4 nationally recognized statistical rating organiza-
5 tion, resolve any conflicts of interest that may
6 arise;

7 “(E) be responsible for administering the
8 policies and procedures required to be estab-
9 lished pursuant to this section;

10 “(F) ensure compliance with securities
11 laws and the rules and regulations issued there-
12 under, including rules prescribed by the Com-
13 mission pursuant to this section; and

14 “(G) establish procedures—

15 “(i) for the receipt, retention, and
16 treatment of complaints regarding credit
17 ratings, models, methodologies, and com-
18 pliance with the securities laws and the
19 policies and procedures required under this
20 section;

21 “(ii) for the receipt, retention, and
22 treatment of confidential, anonymous com-
23 plaints by employees, obligors, issuers, and
24 investors;

1 “(iii) for the remediation of non-com-
2 pliance issues found during compliance of-
3 fice reviews, the reviews required under
4 paragraph (7), internal or external audit
5 findings, self-reported errors, or through
6 validated complaints; and

7 “(iv) designed so that ratings that the
8 nationally recognized statistical rating or-
9 ganization disseminates reflect consider-
10 ation of all information in a manner gen-
11 erally consistent with the nationally recog-
12 nized statistical rating organization’s pub-
13 lished rating methodology, including infor-
14 mation which is provided, received, or oth-
15 erwise obtained from obligor, issuer and
16 non-issuer sources, such as investors, the
17 media, and other interested or informed
18 parties.

19 “(3) LIMITATIONS.—The compliance officer
20 shall not, while serving in that capacity—

21 “(A) determine credit ratings;

22 “(B) participate in the establishment of
23 the procedures and methodologies or the quali-
24 tative methodologies and quantitative inputs
25 used to determine credit ratings;

1 “(C) perform marketing or sales functions;
2 or

3 “(D) participate in establishing compensa-
4 tion levels, other than for employees working
5 for the compliance officer.

6 “(4) ANNUAL REPORTS REQUIRED.—The com-
7 pliance officer shall annually prepare and sign a re-
8 port on the compliance of the nationally recognized
9 statistical rating organization with the securities
10 laws and such organization’s internal policies and
11 procedures, including its code of ethics and conflict
12 of interest policies, in accordance with rules pre-
13 scribed by the Commission. Such compliance report
14 shall accompany the financial reports of the nation-
15 ally recognized statistical rating organization that
16 are required to be filed with the Commission pursu-
17 ant to this section and shall include a certification
18 that, under penalty of law, the report is accurate
19 and complete.

20 “(5) COMPENSATION.—The compensation of
21 the compliance officer shall not be linked to the
22 business performance of the nationally recognized
23 statistical rating organization and shall be arranged
24 so as to ensure the independence of the officer’s
25 judgment.”;

1 (8) in subsection (k)—

2 (A) by striking “, on a confidential basis,”;

3 (B) by striking “furnish to” and inserting
4 “file with”;

5 (C) by striking “Each nationally” and in-
6 serting the following:

7 “(1) IN GENERAL.—Each nationally”; and

8 (D) by adding at the end the following new
9 paragraph:

10 “(2) EXCEPTION.—The Commission may treat
11 as confidential any information provided by a na-
12 tionally recognized statistical rating organization
13 under this section consistent with applicable Federal
14 laws or Commission rules.”;

15 (9) in subsection (l)(2)(A)(i), by striking “fur-
16 nished” and inserting “filed”;

17 (10) by amending subsection (p) to read as fol-
18 lows:

19 “(p) ESTABLISHMENT OF SEC OFFICE.—

20 “(1) IN GENERAL.—The Commission shall es-
21 tablish an office that administers the rules of the
22 Commission with respect to the practices of nation-
23 ally recognized statistical rating organizations.

24 “(2) STAFFING.—The office of the Commission
25 established under this subsection shall be staffed

1 sufficiently to carry out fully the requirements of
2 this section.

3 “(3) RULEMAKING AUTHORITY.—The Commis-
4 sion shall—

5 “(A) establish, by rule, fines and other
6 penalties for any nationally recognized statis-
7 tical rating organization that violates the appli-
8 cable requirements of this title; and

9 “(B) issue such rules as may be necessary
10 to carry out this section with respect to nation-
11 ally recognized statistical rating organiza-
12 tions.”; and

13 (11) by adding after subsection (p) the fol-
14 lowing new subsections:

15 “(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

16 “(1) RULEMAKING REQUIRED.—The Commis-
17 sion shall, by rule, require each nationally recognized
18 statistical rating organization to publicly disclose in-
19 formation on initial ratings and subsequent changes
20 to such ratings for the purpose of providing a gauge
21 of the performance of ratings and allowing investors
22 to compare performance of ratings by different na-
23 tionally recognized statistical rating organizations.

1 “(2) CONTENT.—The rules of the Commission
2 under this subsection shall require, at a minimum,
3 disclosures that—

4 “(A) are comparable among nationally rec-
5 ognized statistical rating organizations, so that
6 investors can compare rating performance
7 across rating organizations;

8 “(B) are clear and informative for a wide
9 range of investor sophistication;

10 “(C) include performance information over
11 a range of years and for a variety of classes of
12 credit ratings, as determined by the Commis-
13 sion;

14 “(D) are published and made freely avail-
15 able by the nationally recognized statistical rat-
16 ing organization, on an easily accessible portion
17 of its website and in written form when re-
18 quested by investors; and

19 “(E) each nationally recognized statistical
20 rating organization include an attestation with
21 any credit rating it issues affirming that no
22 part of the rating was influenced by any other
23 business activities, that the rating was based
24 solely on the merits of the instruments being
25 rated, and that such rating was an independent

1 evaluation of the risks and merits of the instru-
2 ment.

3 “(r) CREDIT RATINGS METHODOLOGIES.—

4 “(1) IN GENERAL.—The Commission shall pre-
5 scribe rules, in the public interest and for the pro-
6 tection of investors, that require each nationally rec-
7 ognized statistical rating organization to establish,
8 maintain, and enforce written procedures and meth-
9 odologies and an internal control system with respect
10 to such procedures and methodologies that are rea-
11 sonably designed to—

12 “(A) ensure that credit ratings are deter-
13 mined using procedures and methodologies, in-
14 cluding qualitative methodologies and quan-
15 titative inputs that are determined in accord-
16 ance with the policies and procedures of the na-
17 tionally recognized statistical rating organiza-
18 tion for developing and modifying credit rating
19 procedures and methodologies;

20 “(B) ensure that when major changes to
21 credit rating procedures and methodologies, in-
22 cluding to qualitative methodologies and quan-
23 titative inputs, are made, that the changes are
24 applied consistently to all credit ratings to
25 which the changed procedures and methodolo-

gies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is publicly disclosed;

“(C) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, of the procedure or methodology, including qualitative methodologies and quantitative inputs, used with respect to a particular credit rating; and

“(D) notify persons who have access to the credit ratings of the nationally recognized statistical rating organization, regardless of whether they are made readily accessible for free or a reasonable fee, when a change is made to a procedure or methodology, including to qualitative methodologies and quantitative inputs, or an error is identified in a procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in

1 current credit ratings being subject to rating
2 actions.

3 “(2) SYMBOLS.—The Commission may pre-
4 scribe rules that require nationally recognized statis-
5 tical rating organizations to establish credit rating
6 symbols that distinguish credit ratings for struc-
7 tured products from credit ratings for other prod-
8 ucts that the Commission determines appropriate or
9 necessary in the public interest and for the protec-
10 tion of investors, provided such rules do not prevent
11 public pension funds or other State regulated enti-
12 ties from investing in rated products.

13 “(3) RATING CLARITY AND CONSISTENCY.—

14 “(A) COMMISSION OBLIGATION.—Subject
15 to subparagraphs (B) and (C), the Commission
16 shall require, by rule, each nationally recognized
17 statistical rating organization to establish,
18 maintain, and enforce written policies and pro-
19 cedures reasonably designed—

20 “(i) with respect to credit ratings of
21 securities and money market instruments,
22 to assess the risk that investors in securi-
23 ties and money market instruments may
24 not receive payment in accordance with the
25 terms of such securities and instruments;

1 “(ii) to define clearly any credit rating
2 symbol used by that organization; and

3 “(iii) to apply such credit rating sym-
4 bol in a consistent manner for all types of
5 securities and money market instruments.

6 “(B) ADDITIONAL CREDIT FACTORS.—
7 Nothing in subparagraph (A)—

8 “(i) prohibits a nationally recognized
9 statistical rating organization from using
10 additional credit factors that are docu-
11 mented and disclosed by the organization
12 and that have a demonstrated impact on
13 the risk an investor in a security or money
14 market instrument will not receive repay-
15 ment in accordance with the terms of
16 issuance;

17 “(ii) prohibits a nationally recognized
18 statistical rating organization from consid-
19 ering credit factors that are unique to mu-
20 nicipal securities; or

21 “(iii) prohibits a nationally recognized
22 statistical rating organization from using
23 an additional symbol with respect to the
24 ratings described in subparagraph (A)(i)
25 for the purpose of distinguishing the rat-

1 ings of a certain type of security or money
2 market instrument from ratings of any
3 other types of securities or money market
4 instruments.

5 “(C) COMPLEMENTARY RATINGS.—The
6 Commission shall not impose any requirement
7 under subparagraph (A) that prevents nation-
8 ally recognized statistical rating organizations
9 from establishing ratings that are complemen-
10 tary to the ratings described in subparagraph
11 (A)(i) and that are created to measure a dis-
12 crete aspect of the security’s or instrument’s
13 risk.

14 “(s) TRANSPARENCY OF CREDIT RATING METH-
15 ODOLOGIES AND INFORMATION REVIEWED.—

16 “(1) IN GENERAL.—The Commission shall re-
17 quire, by rule, a nationally recognized statistical rat-
18 ing organization to include with the publication of
19 each credit rating regardless of whether the credit
20 rating is made readily accessible for free or a rea-
21 sonable fee a form that discloses information about
22 the assumptions underlying the procedures and
23 methodologies used, and the data relied on, to deter-
24 mine the credit rating in the format prescribed in

1 paragraph (2) and containing the information de-
2 scribed in paragraph (3).

3 “(2) FORMAT.—The Commission shall prescribe
4 a form for use under paragraph (1) that—

5 “(A) is designed in a user-friendly and
6 helpful manner for investors to understand the
7 information contained in the report;

8 “(B) requires the nationally recognized
9 statistical rating organization to provide the
10 content, as required by paragraph (3), in a
11 manner that is directly comparable across secu-
12 rities; and

13 “(C) the nationally recognized statistical
14 rating organization certifies the information on
15 the form as true and accurate.

16 “(3) CONTENT.—The Commission shall pre-
17 scribe a form that requires a nationally recognized
18 statistical rating organization to disclose—

19 “(A) the main assumptions included in
20 constructing procedures and methodologies, in-
21 cluding qualitative methodologies and quan-
22 titative inputs and assumptions about the cor-
23 relation of defaults across underlying assets
24 used in rating certain structured products;

1 “(B) the potential shortcomings of the
2 credit ratings, and the types of risks not meas-
3 ured in the credit ratings that the nationally
4 recognized statistical rating organization is not
5 commenting on, such as liquidity, market, and
6 other risks;

7 “(C) information on the certainty of the
8 rating, including information on the reliability,
9 accuracy, and quality of the data relied on in
10 determining the ultimate credit rating and a
11 statement on the extent to which key data in-
12 puts for the credit rating were reliable or lim-
13 ited, including any limits on the reach of histor-
14 ical data, limits in accessibility to certain docu-
15 ments or other forms of information that would
16 have better informed the credit rating, and the
17 completeness of certain information considered;

18 “(D) whether and to what extent third
19 party due diligence services have been utilized,
20 and a description of the information that such
21 third party reviewed in conducting due diligence
22 services;

23 “(E) a description of relevant data about
24 any obligor, issuer, security, or money market

1 instrument that was used and relied on for the
2 purpose of determining the credit rating;

3 “(F) a statement containing an overall as-
4 sessment of the quality of information available
5 and considered in producing a credit rating for
6 a security in relation to the quality of informa-
7 tion available to the nationally recognized sta-
8 tistical rating organization in rating similar ob-
9 ligors, securities, or money market instruments;

10 “(G) an explanation or measure of the po-
11 tential volatility for the credit rating, including
12 any factors that might lead to a change in the
13 credit rating, and the extent of the change that
14 might be anticipated under different conditions;

15 “(H) information on the content of the
16 credit rating, including—

17 “(i) the expected default probability;

18 and

19 “(ii) the loss given default;

20 “(I) information on the sensitivity of the
21 rating to assumptions made by the nationally
22 recognized statistical rating organization, in-
23 cluding—

24 “(i) 5 assumptions made in the rat-
25 ings process that, without accounting for

1 any other factor, would have the greatest
2 impact on a rating if such assumptions
3 were proven false or inaccurate; and

4 “(ii) an analysis, using concrete exam-
5 ples, on how each of the 5 assumptions
6 identified under clause (i) impacts a rat-
7 ing;

8 “(J) where applicable, how the nationally
9 recognized statistical rating organization used
10 servicer or remittance reports, and with what
11 frequency, to conduct surveillance of the credit
12 rating; and

13 “(K) such additional information as may
14 be required by the Commission.

15 “(4) DUE DILIGENCE SERVICES.—

16 “(A) CERTIFICATION REQUIRED.—In any
17 case in which third-party due diligence services
18 are employed by a nationally recognized statis-
19 tical rating organization or an issuer, under-
20 writer, or sponsor in connection with the
21 issuance of a credit rating, the firm providing
22 the due diligence services shall provide to the
23 nationally recognized statistical rating organiza-
24 tion written certification of such due diligence,
25 which shall be subject to review by the Commis-

1 sion, and the issuer, underwriter, or sponsor
2 shall provide any reports issued by the provider
3 of such due diligence services to the nationally
4 recognized statistical rating organization.

5 “(B) FORMAT AND CONTENT.—The Com-
6 mission shall establish the appropriate format
7 and content for written certifications required
8 under subparagraph (A) to ensure that pro-
9 viders of due diligence services certify that they
10 have conducted a thorough review of data, doc-
11 umentation, and other relevant information nec-
12 essary for the nationally recognized statistical
13 rating organization to provide a reliable rating.

14 “(C) DISCLOSURE OF CERTIFICATION.—
15 The Commission shall adopt rules requiring a
16 nationally recognized statistical rating organiza-
17 tion to disclose to persons who have access to
18 the credit ratings of the nationally recognized
19 statistical rating organization regardless of
20 whether they are made readily accessible for
21 free or a reasonable fee the certification de-
22 scribed in subparagraph (A) with the publica-
23 tion of the applicable credit rating in a manner
24 that may permit the persons to determine the

1 adequacy and level of due diligence services pro-
2 vided by the third party.

3 “(t) PROHIBITED ACTIVITIES.—Beginning 180 days
4 from the date of enactment of the Accountability, Reli-
5 ability, and Transparency in Rating Agencies Act, it shall
6 be unlawful for a nationally recognized statistical rating
7 organization, or an affiliate of a nationally recognized sta-
8 tistical rating organization, or any person associated with
9 a nationally recognized statistical rating organization, that
10 provides a credit rating for an issuer, underwriter, or
11 placement agent of a security to provide any non-rating
12 service to that issuer, underwriter, or placement agent in
13 determining a credit rating, including—

14 “(1) risk management advisory services;

15 “(2) advice or consultation relating to any
16 merger, sales, or disposition of assets of the issuer;

17 “(3) ancillary assistance, advice, or consulting
18 services unrelated to any specific credit rating
19 issuance; and

20 “(4) such further activities or services as the
21 Commission may determine as necessary or appro-
22 priate in the public interest or for the protection of
23 investors.”.

24 (b) CONFORMING AMENDMENT.—Section 3(a)(62) of
25 the Securities Exchange Act of 1934 is amended by strik-

1 ing subparagraph (A) and redesignating subparagraphs
2 (B) and (C) as subparagraphs (A) and (B), respectively.

3 **SEC. 6003. STANDARDS FOR PRIVATE ACTIONS.**

4 (a) IN GENERAL.—Section 21D(b)(2) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is
6 amended by inserting before the period at the end of the
7 following: “, and in the case of an action brought under
8 this title for money damages against a nationally recog-
9 nized statistical rating organization, it shall be sufficient
10 for purposes of pleading any required state of mind for
11 purposes of such action that the complaint shall state with
12 particularity facts giving rise to a strong inference that
13 the nationally recognized statistical rating organization
14 was grossly negligent in violating the securities laws”.

15 (b) PLEADING STANDARD.—Section 15E(m) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78o–7(m))
17 amended to read as follows:

18 “(m) APPLICATION OF ENFORCEMENT PROVISIONS;
19 PLEADING STANDARD IN PRIVATE RIGHTS OF ACTION.—
20 Statements made by nationally recognized statistical rat-
21 ing organizations shall not be deemed forward looking
22 statements for purposes of section 21E. In any private
23 right of action commenced against a nationally recognized
24 statistical rating organization under the securities laws,
25 the same pleading standards with respect to gross neg-

1 ligen­ce shall apply to the nationally recognized statistical
2 rating organization as would apply to any other person
3 in the same private right of action against such person.”.

4 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of
5 the Securities Exchange Act of 1934 (15 U.S.C. 78u–4)
6 is amended—

7 (1) by redesignating subsections (c) through (f)
8 as subsections (d) through (g), respectively; and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) REQUIREMENTS FOR LIABILITY.—A purchaser
12 of a security given a rating by a nationally recognized sta-
13 tistical rating organization shall have the right to recover
14 for damages if the process of determining the credit rating
15 was—

16 “(1) grossly negligent, based on the facts and
17 circumstances at the time the rating was issued; and

18 “(2) a substantial factor in the economic loss
19 suffered by the investor.

20 No action shall be maintained to enforce any liability cre-
21 ated under this subsection unless brought within 2 years
22 after the discovery of the facts constituting the violation
23 and within 3 years after the initial issuance of the rat-
24 ing.”.

1 **SEC. 6004. ISSUER DISCLOSURE OF PRELIMINARY RATINGS.**

2 The Securities and Exchange Commission shall adopt
3 rules under authority of the Securities Act of 1933 (15
4 U.S.C. 77a et seq.) to require issuers to disclose prelimi-
5 nary credit ratings received from nationally recognized
6 statistical rating agencies on structured products and all
7 forms of corporate debt.

8 **SEC. 6005. CHANGE TO DESIGNATION.**

9 The Securities Act of 1933 and the Securities Ex-
10 change Act of 1934 are each amended by striking “nation-
11 ally recognized statistical rating” each place it appears
12 and inserting “nationally registered statistical rating”.

13 **SEC. 6006. TIMELINE FOR REGULATIONS.**

14 Unless otherwise specified in this subtitle, the Securi-
15 ties and Exchange Commission shall adopt rules and regu-
16 lations, as required by the amendments made by this sub-
17 title, not later than 365 days after the date of enactment.

18 **SEC. 6007. ELIMINATION OF EXEMPTION FROM FAIR DIS-**
19 **CLOSURE RULE.**

20 Not later than 90 days after the date of enactment
21 of this subtitle, the Securities Exchange Commission shall
22 revise Regulation FD (17 CFR 243.100) to remove from
23 such regulation the exemption for entities whose primary
24 business is the issuance of credit ratings (17 CFR
25 243.100(b)(2)(iii)).

1 **SEC. 6008. ADVISORY BOARD.**

2 (a) ESTABLISHMENT.—Not later than 90 days after
3 the date of the enactment of this subtitle, the Securities
4 and Exchange Commission shall establish an advisory
5 board to be known as the Credit Ratings Agency Advisory
6 Board (in this section referred to as “the Board”).

7 (b) APPOINTMENT AND TERMS OF SERVICE.—The
8 Board shall consist of 7 members appointed by the Com-
9 mission, no more than 2 of whom may be former employ-
10 ees of a credit rating agency. Members of the Board shall
11 be prominent individuals of integrity and reputation who
12 have a demonstrated commitment to the interests of inves-
13 tors and the public, and an understanding of the role that
14 credit ratings play to a broad range of investors. Terms
15 of service shall be staggered as determined by the Com-
16 mission.

17 (c) DUTIES.—The Board shall—

18 (1) advise the Commission concerning the rules
19 and regulations required by the amendments made
20 by this subtitle;

21 (2) ensure that the Commission properly and
22 fully executes its oversight functions and responsibil-
23 ities with the respect to nationally recognized statis-
24 tical rating organizations and individual partici-
25 pants; and

1 (3) issue an annual report to Congress detailing
2 its work and recommending any additional Congres-
3 sional actions necessary to aid the Commission and
4 such additional reports from time to time as appro-
5 priate when it feels that the Commission is not prop-
6 erly executing its oversight functions.

7 **SEC. 6009. REMOVAL OF STATUTORY REFERENCES TO**
8 **CREDIT RATINGS.**

9 (a) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-
10 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
11 amended—

12 (1) in section 28(d)—

13 (A) in the subsection heading, by striking
14 “NOT OF INVESTMENT GRADE”;

15 (B) in paragraph (1), by striking “not of
16 investment grade” and inserting “that does not
17 meet standards of credit-worthiness as estab-
18 lished by the Corporation”;

19 (C) in paragraph (2), by striking “not of
20 investment grade”;

21 (D) by striking paragraph (3) and redesign-
22 nating paragraph (4) as paragraph (3); and

23 (E) in paragraph (3) (as so redesign-
24 nated)—

1 (i) by striking subparagraph (A) and
2 redesignating subparagraphs (B) and (C)
3 as subparagraphs (A) and (B), respec-
4 tively; and

5 (ii) in subparagraph (B) (as so redes-
6 ignated), by striking “not of investment
7 grade” and inserting “that does not meet
8 standards of credit-worthiness as estab-
9 lished by the Corporation”;

10 (2) in section 28(e)—

11 (A) in the subsection heading, by striking
12 “NOT OF INVESTMENT GRADE”;

13 (B) in paragraph (1), by striking “not of
14 investment grade” and inserting “that does not
15 meet standards of credit-worthiness as estab-
16 lished by the Corporation”; and

17 (C) in paragraphs (2) and (3), by striking
18 “not of investment grade” each place that it ap-
19 pears and inserting “that does not meet stand-
20 ards of credit-worthiness established by the
21 Corporation”; and

22 (3) in section 7(b)(1)(E)(i), by striking “credit
23 rating entities, and other private economic” and in-
24 sert “private economic, credit,”.

1 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL
2 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
3 of the Federal Housing Enterprises Financial Safety and
4 Soundness Act of 1992 (12 U.S.C. 4519) is amended—

5 (1) in the section heading, by striking “**BY**
6 **RATING ORGANIZATION**”; and

7 (2) by striking “that is a nationally recognized
8 statistical rating organization, as such term is de-
9 fined in section 3(a) of the Securities Exchange Act
10 of 1934,”.

11 (c) INVESTMENT COMPANY ACT OF 1940.—Section
12 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15
13 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking “is
14 rated investment grade by not less than 1 nationally recog-
15 nized statistical rating organization” and inserting “meets
16 such standards of credit-worthiness that the Commission
17 shall adopt”.

18 (d) REVISED STATUTES.—Section 5136A of title
19 LXII of the Revised Statutes of the United States (12
20 U.S.C. 24a) is amended—

21 (1) in subsection (a)(2)(E), by striking “any
22 applicable rating” and inserting “standards of cred-
23 it-worthiness established by the Comptroller of the
24 Currency”;

1 (2) in the heading for subsection (a)(3) by
2 striking “RATING OR COMPARABLE REQUIREMENT”
3 and inserting “REQUIREMENT”;

4 (3) subsection (a)(3), by amending subpara-
5 graph (A) to read as follows:

6 “(A) IN GENERAL.—A national bank meets
7 the requirements of this paragraph if the bank
8 is one of the 100 largest insured banks and has
9 not fewer than 1 issue of outstanding debt that
10 meets standards of credit-worthiness or other
11 criteria as the Secretary of the Treasury and
12 the Board of Governors of the Federal Reserve
13 System may jointly establish.”.

14 (4) in the heading for subsection (f), by striking
15 “MAINTAIN PUBLIC RATING OR” and inserting
16 “MEET STANDARDS OF CREDIT-WORTHINESS”; and

17 (5) in subsection (f)(1), by striking “any appli-
18 cable rating” and inserting “standards of credit-wor-
19 thiness established by the Comptroller of the Cur-
20 rency”.

21 (e) SECURITIES EXCHANGE ACT OF 1934.—Section
22 3(a) Securities Exchange Act of 1934 (15 U.S.C.
23 78a(3)(a)) is amended—

24 (1) in paragraph (41), by striking “is rated in
25 one of the two highest rating categories by at least

1 one nationally recognized statistical rating organiza-
2 tion” and inserting “meets standards of credit-wor-
3 thiness as defined by the Commission”; and

4 (2) in paragraph (53)(A), by striking “is rated
5 in 1 of the 4 highest rating categories by at least 1
6 nationally recognized statistical rating organization”
7 and inserting “meets standards of credit-worthiness
8 as defined by the Commission”.

9 (f) **WORLD BANK DISCUSSIONS.**—Section 3(a)(6) of
10 the amendment in the nature of a substitute to the text
11 of H.R. 4645, as ordered reported from the Committee
12 on Banking, Finance and Urban Affairs on September 22,
13 1988, as enacted into law by section 555 of Public Law
14 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking
15 “rating” and inserting “worthiness”.

16 (g) **EFFECTIVE DATE.**—The amendments made by
17 this section shall take effect after the end of the 6-month
18 period beginning on the date of the enactment of this sub-
19 title.

20 **SEC. 6010. REVIEW OF RELIANCE ON RATINGS.**

21 (a) **AGENCY REVIEW.**—

22 (1) **REVIEW.**—Not later than 1 year after the
23 date of the enactment of this subtitle, each Federal
24 agency listed in paragraph (4) shall, to the extent
25 applicable, review—

1 (A) any regulation issued by such agency
2 that requires the use of an assessment of the
3 credit-worthiness of a security or money market
4 instrument; and

5 (B) any references to or requirements in
6 such regulations regarding credit ratings.

7 (2) MODIFICATIONS REQUIRED.—Each such
8 agency shall modify any such regulations identified
9 by the review conducted under paragraph (1) to re-
10 move any reference to or requirement of reliance on
11 credit ratings and to substitute in such regulations
12 such standard of credit-worthiness as each respective
13 agency shall determine as appropriate for such regu-
14 lations. In making such determination, such agencies
15 shall seek to establish, to the extent feasible, uni-
16 form standards of credit-worthiness for use by each
17 such agency, taking into account the entities regu-
18 lated by each such agency and the purposes for
19 which such entities would rely on such standards of
20 credit-worthiness.

21 (3) REPORT.—Upon conclusion of the review
22 required under paragraph (1), each Federal agency
23 listed in paragraph (4) shall transmit a report to
24 Congress containing a description of any modifica-

1 tion of any regulation such agency made pursuant to
2 paragraph (2).

3 (4) APPLICABLE AGENCIES.—The agencies re-
4 quired to conduct the review and report required by
5 this subsection are—

6 (A) the Securities and Exchange Commis-
7 sion;

8 (B) the Federal Deposit Insurance Cor-
9 poration;

10 (C) the Office of Thrift Supervision;

11 (D) the Office of the Comptroller of the
12 Currency;

13 (E) the Board of Governors of the Federal
14 Reserve;

15 (F) the National Credit Union Administra-
16 tion; and

17 (G) the Federal Housing Finance Agency.

18 (b) GAO REVIEW OF OTHER AGENCIES.—

19 (1) REVIEW.—The Comptroller General shall
20 conduct a comprehensive review of the use of credit
21 ratings by Federal agencies other than those listed
22 in subsection (a)(3), including an analysis of the
23 provisions of law or regulation applicable to each
24 such agency that refer to and require the use of
25 credit ratings by the agency, and the policies and

1 practices of each agency with respect to credit rat-
2 ings.

3 (2) REPORT.—Not later than 18 months after
4 the date of the enactment of this subtitle, the Comp-
5 troller General shall transmit to Congress a report
6 on the findings of the study conducted pursuant to
7 paragraph (1), including recommendations for any
8 legislation or rulemaking necessary or appropriate in
9 order for such agencies to reduce their reliance on
10 credit ratings.

11 **SEC. 6011. PUBLICATION OF RATING HISTORIES ON THE**
12 **EDGAR SYSTEM.**

13 Not later than 180 days after the date of the enact-
14 ment of this subtitle, the Securities and Exchange Com-
15 mission shall revise its rules in section 240.17g–2(a) and
16 (d) of title 17, Code of Federal Regulations, to require
17 that the random sample of ratings histories of credit rat-
18 ings required under such rules to be disclosed on the
19 website of a nationally recognized statistical rating organi-
20 zation also be provided to the Commission in a format con-
21 sistent with publication by the Commission on the
22 EDGAR system.

1 **SEC. 6012. EFFECT OF RULE 436(G).**

2 Rule 436(g), promulgated by the Securities and Ex-
3 change Commission under the Securities Act of 1933,
4 shall have no force or effect.

5 **SEC. 6013. STUDIES.**

6 (a) GAO STUDY.—

7 (1) IN GENERAL.—The Comptroller General
8 shall conduct a study of—

9 (A) the implementation of this subtitle and
10 the amendments made by this subtitle by the
11 Securities and Exchange Commission;

12 (B) the appropriateness of relying on rat-
13 ings for use in Federal, State, and local securi-
14 ties and banking regulations, including for de-
15 termining capital requirements;

16 (C) the effect of liability in private actions
17 arising under the Securities Exchange Act of
18 1934;

19 (D) alternative means for compensating
20 credit rating agencies that would create incen-
21 tives for accurate credit ratings and what, if
22 any, statutory changes would be required to
23 permit or facilitate the use of such alternative
24 means of compensation; and

25 (E) alternative methodologies to assess
26 credit risk, including market-based measures.

1 (2) REPORT.—Not later than 30 months after
2 the date of enactment of this subtitle, the Comp-
3 troller General shall submit to Congress and the Se-
4 curities Exchange Commission, a report containing
5 the findings under the study required by subsection
6 (a).

7 (3) ACCESS.—

8 (A) IN GENERAL.—For purposes of con-
9 ducting the study described in paragraph (1),
10 the Comptroller General shall have access, upon
11 request and with the consent of the Securities
12 and Exchange Commission, to any information,
13 data, schedules, books, accounts, financial
14 records, reports, files, electronic communica-
15 tions, or other papers, things, or property be-
16 longing to or in use by each nationally recog-
17 nized statistical rating organization, and to the
18 officers, directors, employees, independent pub-
19 lic accountants, financial advisors, staff and
20 agents and representatives of the organization
21 (as related to the agent's or representative's ac-
22 tivities on behalf of the organization) at such
23 reasonable times as the Comptroller General
24 may request. The Comptroller General may
25 make and retain copies of books, records, ac-

1 counts, and other records as the Comptroller
2 General deems appropriate.

3 (B) CONFIDENTIALITY.—The Comptroller
4 General may not disclose reasonably designated
5 proprietary, trade secret or business confiden-
6 tial information obtained from the organization
7 except that such information shall be disclosed
8 by the Comptroller General—

9 (i) to other Federal Government de-
10 partments, agencies, and officials for offi-
11 cial use upon request;

12 (ii) to committees of Congress upon
13 request; and

14 (iii) to a court in any judicial pro-
15 ceeding under court order.

16 Nothing in this provision shall be construed to
17 limit the requirements imposed by section 1905
18 of title 18, United States Code.

19 (b) SEC STUDY ON ASSIGNING CREDIT RATING
20 AGENCIES ON A ROTATING BASIS.—The Securities and
21 Exchange Commission shall undertake a study on creating
22 a system whereby nationally recognized statistical rating
23 organizations are assigned on a rotating basis to issuers
24 and obligors seeking a credit rating. Not later than 1 year
25 after the date of enactment of this subtitle, the Securities

1 and Exchange Commission shall transmit to Congress a
2 report containing the findings of the study.

3 (c) SEC STUDY ON EFFECT OF NEW REQUIRE-
4 MENTS ON NRSRO REGISTRATION.—The Securities and
5 Exchange Commission shall conduct a study on the effect
6 of the amendments made by section 2 on credit rating
7 agencies seeking to register as nationally recognized sta-
8 tistical rating organizations, including whether the new re-
9 quirements in such amendments deter credit rating agen-
10 cies from registering as nationally recognized statistical
11 rating organizations. Not later than 1 year after the date
12 of enactment of this subtitle, the Commission shall trans-
13 mit to the Committee on Financial Services of the House
14 of Representatives and the Committee on Banking, Hous-
15 ing, and Urban Affairs of the Senate a report on the find-
16 ings of such study.

17 (d) STUDY OF CREDIT RATINGS OF DIFFERENT
18 CLASSES OF BONDS.—

19 (1) STUDY.—The Securities and Exchange
20 Commission shall conduct a study of the treatment
21 of different classes of bonds (municipal versus cor-
22 porate) by the nationally recognized statistical rating
23 organizations. Such study shall examine—

24 (A) whether there are fundamental dif-
25 ferences in the treatment of different classes of

1 bonds by such rating organizations that cause
2 some classes of bonds to suffer from undue dis-
3 crimination;

4 (B) if there are such differences, what are
5 the causes of such differences and how can they
6 be alleviated;

7 (C) whether there are factors other than
8 risk of loss that are appropriate for the credit
9 ratings agencies to consider when rating bonds,
10 and do those factors vary across different sec-
11 tors;

12 (D) the types of financing arrangement
13 used by municipal issuers;

14 (E) the differing legal and regulatory re-
15 gimes governing disclosures for corporate bonds
16 and municipal bonds;

17 (F) the extent to which retail investors
18 could be disadvantaged by a single ratings
19 scale; and

20 (G) practices, policies, and methodologies
21 by the nationally recognized statistical rating
22 organizations with respect to rating municipal
23 bonds.

24 (2) REPORT.—Within 6 months after the date
25 of enactment of this subtitle, the Securities and Ex-

1 change Commission shall submit a report on the re-
2 sults of the study required by paragraph (1) to the
3 Committee on Financial Services of the House of
4 Representatives and the Committee on Banking,
5 Housing, and Urban Development of the Senate.
6 Such report shall include as assessment of each of
7 the issues and subjects described in subparagraphs
8 (A) through (G) of paragraph (1).

9 (e) SEC STUDY ON MEANINGFUL MULTI-DIGIT RAT-
10 ING SYMBOLS.—

11 (1) STUDY.—The Securities and Exchange
12 Commission shall conduct a study on the feasibility
13 and desirability of implementing a standardized rat-
14 ing system whereby ratings symbols contain multiple
15 characters, each representing a range of default
16 probabilities and loss expectations under standard-
17 ized and increasingly severe levels of market stress.
18 The study shall optimize the definitions of the sym-
19 bols to maximize their overall usefulness for users of
20 credit ratings.

21 (2) INITIAL EXAMPLE FOR GUIDANCE.—An ex-
22 ample to provide initial guidance for the study is a
23 ratings symbol consisting of three digits, each of
24 which corresponds to default probabilities under dif-
25 ferent levels of market stress as follows:

1 (A) The first digit represents the default
2 probability under “normal” market stress, char-
3 acterized by normal economic fluctuations in
4 addition to a 5 percent decline in asset value
5 and 2 percent increase in unemployment.

6 (B) The second digit represents the default
7 probability under more severe market stress,
8 characterized a 20 percent decline in asset
9 value and 5 percent increase in unemployment.

10 (C) The third digit represents the default
11 probability under extreme market stress, char-
12 acterized by a 50 percent decline in asset value
13 and 10 percent increase in unemployment.

14 (3) REPORT.—Not later than 1 year after the
15 date of the enactment of this subtitle, the Commis-
16 sion shall transmit to Congress a report of the study
17 conducted pursuant to paragraph (1), including rec-
18 ommendations on whether the system similar to that
19 described in paragraph (2) should be implemented
20 and, if so, any necessary legislation required to im-
21 plement such a system.

22 (f) SEC STUDY ON RATINGS STANDARDIZATION.—

23 (1) IN GENERAL.—The Securities and Ex-
24 change Commission shall undertake a study on the
25 feasibility and desirability of—

1 (A) standardizing credit ratings termi-
2 nology, so that all credit rating agencies issue
3 credit ratings using identical terms;

4 (B) standardizing the market stress condi-
5 tions under which ratings are evaluated;

6 (C) requiring a quantitative correspond-
7 ence between credit ratings and a range of de-
8 fault probabilities and loss expectations under
9 standardized conditions of economic stress; and

10 (D) standardizing credit rating termi-
11 nology across asset classes, so that named rat-
12 ings shall correspond to a standard range of de-
13 fault probabilities and expected losses inde-
14 pendent of asset class and issuing entity.

15 (2) REPORT.—Not later than 1 year after the
16 date of enactment of this subtitle, the Securities and
17 Exchange Commission shall transmit to Congress a
18 report containing the findings of the study and the
19 recommendations of the Commission.

20 **Subtitle C—Investor Protection Act**

21 **SEC. 7001. SHORT TITLE.**

22 This subtitle may be cited as the “Investor Protection
23 Act of 2009”.

PART 1—DISCLOSURE**SEC. 7101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

“SEC. 4D. INVESTOR ADVISORY COMMITTEE.

“(a) ESTABLISHMENT AND PURPOSE.—There is established an Investor Advisory Committee (in this section referred to as the ‘Committee’) to advise and consult with the Commission on—

“(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

“(2) initiatives to protect investor interest; and

“(3) initiatives to promote investor confidence in the integrity of the marketplace.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

“(A) represent the interests of individual investors;

“(B) represent the interests of institutional investors; and

1 “(C) use a wide range of investment ap-
2 proaches.

3 “(2) MEMBERS NOT COMMISSION EMPLOY-
4 EES.—Members shall not be considered employees or
5 agents of the Commission solely because of member-
6 ship on the Committee.

7 “(c) MEETINGS.—The Committee shall meet from
8 time to time at the call of the Commission, but, at a min-
9 imum, shall meet at least twice each year.

10 “(d) COMPENSATION AND TRAVEL EXPENSES.—
11 Members of the Committee who are not full-time employ-
12 ees of the United States shall—

13 “(1) be entitled to receive compensation at a
14 rate fixed by the Commission while attending meet-
15 ings of the Committee, including travel time; and

16 “(2) be allowed travel expenses, including trans-
17 portation and subsistence, while away from their
18 homes or regular places of business.

19 “(e) COMMITTEE FINDINGS.—Nothing in this section
20 requires the Commission to accept, agree, or act upon the
21 findings or recommendations of the Committee.

22 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
23 is authorized to be appropriated to the Commission such
24 sums as are necessary for the activities of the Com-
25 mittee.”.

1 **SEC. 7102. CLARIFICATION OF THE COMMISSION'S AUTHOR-**
2 **ITY TO ENGAGE IN CONSUMER TESTING.**

3 (a) AMENDMENT TO SECURITIES ACT OF 1933.—
4 Section 19 of the Securities Act of 1933 (15 U.S.C. 77s)
5 is amended by adding at the end the following new sub-
6 section:

7 “(e) For the purposes of evaluating its rules and pro-
8 grams and for considering, proposing, adopting, or engag-
9 ing in rules or programs, the Commission is authorized
10 to gather information, communicate with investors or
11 other members of the public, and engage in such tem-
12 porary or experimental programs as the Commission in its
13 discretion determines is in the public interest or for the
14 protection of investors. The Commission may delegate to
15 its staff some or all of the authority conferred by this sub-
16 section.”.

17 (b) AMENDMENT TO SECURITIES EXCHANGE ACT OF
18 1934.—Section 23 of the Securities Exchange Act of 1934
19 (15 U.S.C. 78w) is amended by redesignating subsections
20 (b), (c), and (d) as subsections (c), (d), and (e), respec-
21 tively, and inserting after subsection (a) the following:

22 “(b) For the purposes of evaluating its rules and pro-
23 grams and for considering proposing, adopting, or engag-
24 ing in rules or programs, the Commission is authorized
25 to gather information, communicate with investors or
26 other members of the public, and engage in such tem-

1 porary or experimental programs as the Commission in its
2 discretion determines is in the public interest or for the
3 protection of investors. The Commission may delegate to
4 its staff some or all of the authority conferred by this sub-
5 section.”.

6 (c) AMENDMENT TO INVESTMENT COMPANY ACT OF
7 1940.—Section 38 of the Investment Company Act of
8 1940 (15 U.S.C. 80a–38) is amended by adding at the
9 end the following new subsection:

10 “(d) GATHERING INFORMATION.—For the purposes
11 of evaluating its rules and programs and for considering
12 proposing, adopting, or engaging in rules or programs, the
13 Commission is authorized to gather information, commu-
14 nicate with investors or other members of the public, and
15 engage in such temporary or experimental programs as
16 the Commission in its discretion determines is in the pub-
17 lic interest or for the protection of investors. The Commis-
18 sion may delegate to its staff some or all of the authority
19 conferred by this subsection.”.

20 (d) AMENDMENT TO THE INVESTMENT ADVISERS
21 ACT OF 1940.—Section 211 of the Investment Advisers
22 Act of 1940 (15 U.S.C. 80b–11) (as amended by section
23 5008(2)) is further amended by adding at the end the fol-
24 lowing new subsection:

1 “(f) For the purposes of evaluating its rules and pro-
 2 grams and for considering proposing, adopting, or engag-
 3 ing in rules or programs, the Commission is authorized
 4 to gather information, communicate with investors or
 5 other members of the public, and engage in such tem-
 6 porary or experimental programs as the Commission in its
 7 discretion determines is in the public interest or for the
 8 protection of investors. The Commission may delegate to
 9 its staff some or all of the authority conferred by this sub-
 10 section.”.

11 **SEC. 7103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
 12 **BROKERS, DEALERS, AND INVESTMENT AD-**
 13 **VISERS, AND HARMONIZATION OF REGULA-**
 14 **TION.**

15 (a) IN GENERAL.—

16 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
 17 tion 15 of the Securities Exchange Act of 1934 (15
 18 U.S.C. 78o) (as amended by section 1951(c)) is fur-
 19 ther amended by adding at the end the following
 20 new subsections:

21 “(m) STANDARD OF CONDUCT.—

22 “(1) IN GENERAL.—Notwithstanding any other
 23 provision of this Act or the Investment Advisers Act
 24 of 1940, the Commission shall promulgate rules to
 25 provide that, with respect to a broker or dealer,

1 when providing personalized investment advice about
2 securities to a retail customer (and such other cus-
3 tomers as the Commission may by rule provide), the
4 standard of conduct for such broker or dealer with
5 respect to such customer shall be the same as the
6 standard of conduct applicable to an investment ad-
7 viser under section 211 of the Investment Advisers
8 Act of 1940. The receipt of compensation based on
9 commission or other standard compensation for the
10 sale of securities shall not, in and of itself, be con-
11 sidered a violation of such standard applied to a
12 broker or dealer. Nothing in this section shall re-
13 quire a broker or dealer or registered representative
14 to have a continuing duty of care or loyalty to the
15 customer after providing personalized investment ad-
16 vice about securities.

17 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
18 FERED.—Where a broker or dealer sells only propri-
19 etary or other limited range of products, as deter-
20 mined by the Commission, the Commission shall by
21 rule require that such broker or dealer provide no-
22 tice to each retail customer and obtain the consent
23 or acknowledgment of the customer. The sale of only
24 proprietary or other limited range of products by a
25 broker or dealer shall not, in and of itself, be consid-

1 ered a violation of the standard set forth in para-
2 graph (1).

3 “(3) RETAIL CUSTOMER DEFINED.—For pur-
4 poses of this subsection, the term ‘retail customer’
5 means a natural person, or the legal representative
6 of such natural person, who—

7 “(A) receives personalized investment ad-
8 vice about securities from a broker or dealer;
9 and

10 “(B) uses such advice primarily for per-
11 sonal, family, or household purposes.

12 “(n) OTHER MATTERS.—The Commission shall—

13 “(1) facilitate the provision of simple and clear
14 disclosures to investors regarding the terms of their
15 relationships with brokers, dealers, and investment
16 advisers, including any material conflicts of interest;
17 and

18 “(2) examine and, where appropriate, promul-
19 gate rules prohibiting or restricting certain sales
20 practices, conflicts of interest, and compensation
21 schemes for brokers, dealers, and investment advis-
22 ers that the Commission deems contrary to the pub-
23 lic interest and the protection of investors.”.

24 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
25 tion 211 of the Investment Advisers Act of 1940, as

1 amended by section 7102(d), is further amended by
2 adding at the end the following new subsections:

3 “(g) STANDARD OF CONDUCT.—

4 “(1) IN GENERAL.—The Commission shall pro-
5 mulgate rules to provide that the standard of con-
6 duct for all brokers, dealers, and investment advis-
7 ers, when providing personalized investment advice
8 about securities to retail customers (and such other
9 customers as the Commission may by rule provide),
10 shall be to act in the best interest of the customer
11 without regard to the financial or other interest of
12 the broker, dealer, or investment adviser providing
13 the advice. In accordance with such rules, any mate-
14 rial conflicts of interest shall be disclosed and may
15 be consented to by the customer. Such rules shall
16 provide that such standard of conduct shall be no
17 less stringent than the standard applicable to invest-
18 ment advisers under section 206(1) and (2) of this
19 Act when providing personalized investment advice
20 about securities, except the Commission shall not as-
21 cribe a meaning to the term ‘customer’ that would
22 include an investor in a private fund managed by an
23 investment adviser, where such private fund has en-
24 tered into an advisory contract with such adviser.

25 The receipt of compensation based on commission or

1 fees shall not, in and of itself, be considered a viola-
2 tion of such standard applied to a broker, dealer, or
3 investment adviser.

4 “(2) RETAIL CUSTOMER DEFINED.—For pur-
5 poses of this subsection, the term ‘retail customer’
6 means a natural person, or the legal representative
7 of such natural person, who—

8 “(A) receives personalized investment ad-
9 vice about securities from a broker, dealer, or
10 investment adviser; and

11 “(B) uses such advice primarily for per-
12 sonal, family, or household purposes.

13 “(h) OTHER MATTERS.—The Commission shall—

14 “(1) facilitate the provision of simple and clear
15 disclosures to investors regarding the terms of their
16 relationships with brokers, dealers, and investment
17 advisers, including any material conflicts of interest;
18 and

19 “(2) examine and, where appropriate, promul-
20 gate rules prohibiting or restricting certain sales
21 practices, conflicts of interest, and compensation
22 schemes for brokers, dealers, and investment advis-
23 ers that the Commission deems contrary to the pub-
24 lic interest and the protection of investors.”.

25 (b) HARMONIZATION OF ENFORCEMENT.—

1 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
2 tion 15 of the Securities Exchange Act of 1934, as
3 amended by subsection (a)(1), is further amended by
4 adding at the end the following new subsection:

5 “(o) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to a broker
8 or dealer providing personalized investment advice about
9 securities to a retail customer shall include—

10 “(1) the enforcement authority of the Commis-
11 sion with respect to such violations provided under
12 this Act; and

13 “(2) the enforcement authority of the Commis-
14 sion with respect to violations of the standard of
15 conduct applicable to an investment advisor under
16 the Investment Advisers Act of 1940, including the
17 authority to impose sanctions for such violations,
18 and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to a broker or
21 dealer providing personalized investment advice about se-
22 curities to a retail customer under this Act to same extent
23 as the Commission prosecutes and sanctions violators of
24 the standard of conduct applicable to an investment advi-
25 sor under the Investment Advisers Act of 1940.”.

1 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 211 of the Investment Advisers Act of 1940, as
3 amended by subsection (a)(2), is further amended by
4 adding at the end the following new subsection:

5 “(i) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to an invest-
8 ment adviser shall include—

9 “(1) the enforcement authority of the Commis-
10 sion with respect to such violations provided under
11 this Act; and

12 “(2) the enforcement authority of the Commis-
13 sion with respect to violations of the standard of
14 conduct applicable to a broker or dealer providing
15 personalized investment advice about securities to a
16 retail customer under the Securities Exchange Act
17 of 1934, including the authority to impose sanctions
18 for such violations, and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to an invest-
21 ment advisor under this Act to same extent as the Com-
22 mission prosecutes and sanctions violators of the standard
23 of conduct applicable to a broker or dealer providing per-
24 sonalized investment advice about securities to a retail
25 customer under the Securities Exchange Act of 1934.”.

1 **SEC. 7104. COMMISSION STUDY AND RULEMAKING ON DIS-**
2 **CLOSURE TO RETAIL CUSTOMERS BEFORE**
3 **PURCHASE OF PRODUCTS OR SERVICES.**

4 (a) STUDY REQUIRED.—Prior to proposing any rules
5 or regulations pursuant to subsection (b)(1) regarding the
6 provision of documents or information to retail customers
7 prior to the purchase of investment products or services,
8 and within 180 days after the date of the enactment of
9 this subtitle, the Securities and Exchange Commission
10 shall publish a study that examines—

11 (1) the nature of a “retail customer”, taking
12 into consideration the definition in section 15(k) of
13 the Securities Exchange Act of 1934 (15 U.S.C.
14 78o), as amended by section 7103 of this subtitle;

15 (2) the range of products and services sold or
16 provided to retail customers, and the sellers or pro-
17 viders of such products and services, that are within
18 the Commission’s jurisdiction;

19 (3) how such products and services are sold or
20 provided to retail customers, the fees charged for
21 such products and services, and the conflicts of in-
22 terest that may arise during the sales process or
23 provision of services;

24 (4) information that retail customers should re-
25 ceive prior to purchasing each product or service,

1 and the appropriate person or entity to provide such
2 information; and

3 (5) ways to ensure that, where possible, reason-
4 ably similar products and services are subject to
5 similar regulatory treatment, including with respect
6 to information that must be provided to retail cus-
7 tomers prior to the purchase of such products or
8 services and how such information is provided.

9 (b) RULEMAKING.—

10 (1) Notwithstanding any other provision of the
11 Securities Act of 1933 (15 U.S.C. 77a et seq.) or
12 the Investment Company Act of 1940 (15 U.S.C.
13 80a–1 et seq.), following completion of the study re-
14 quired by subsection (a), the Commission is author-
15 ized to promulgate rules to require that the appro-
16 priate persons or entities provide designated docu-
17 ments or information to retail customers prior to the
18 purchase of identified investment products or serv-
19 ices. Any such rules shall—

20 (A) take into account the findings of the
21 study conducted pursuant to subsection (a);

22 (B) take into consideration, to the extent
23 possible, the need for such documents and in-
24 formation to be consistent and comparable

1 across investment products or services sold or
2 provided to retail customers; and

3 (C) reduce, to the extent possible, interrup-
4 tions to the purchase process for investment
5 products and services sold or provided to retail
6 customers, by means such as permitting re-
7 quired disclosures to be made via the Internet.

8 (2) Notwithstanding paragraph (1), the Com-
9 mission is authorized to promulgate rules in connec-
10 tion with—

11 (A) the implementation of section 7103;

12 and

13 (B) disclosure to retail customers other
14 than rules that require the provision of docu-
15 ments or information to retail customers prior
16 to the purchase of investment products or serv-
17 ices.

18 **SEC. 7105. BENEFICIAL OWNERSHIP AND SHORT-SWING**
19 **PROFIT REPORTING.**

20 (a) BENEFICIAL OWNERSHIP REPORTING.—Section
21 13 of the Securities Exchange Act of 1934 (15 U.S.C.
22 78m) is amended—

23 (1) in subsection (d)(1)—

24 (A) by inserting after “within ten days
25 after such acquisition” the following: “or within

1 such shorter time as the Commission may es-
2 tablish by rule”; and

3 (B) by striking “send to the issuer of the
4 security at its principal executive office, by reg-
5 istered or certified mail, send to each exchange
6 where the security is traded, and”;

7 (2) in subsection (d)(2)—

8 (A) by striking “in the statements to the
9 issuer and the exchange, and”; and

10 (B) by striking “shall be transmitted to
11 the issuer and the exchange and”;

12 (3) in subsection (g)(1), by striking “shall send
13 to the issuer of the security and”; and

14 (4) in subsection (g)(2)—

15 (A) by striking “sent to the issuer and”;

16 and

17 (B) by striking “shall be transmitted to
18 the issuer and”.

19 (b) SHORT-SWING PROFIT REPORTING.—Section
20 16(a) of the Securities Exchange Act of 1934 (15 U.S.C.
21 78p(a)) is amended—

22 (1) in paragraph (1), by striking “(and, if such
23 security is registered on a national securities ex-
24 change, also with the exchange)”; and

1 (2) in paragraph (2)(B), by inserting after “of-
2 ficer” the following: “, or within such shorter time
3 as the Commission may establish by rule”.

4 **SEC. 7106. REVISION TO RECORDKEEPING RULES.**

5 (a) INVESTMENT COMPANY ACT OF 1940 AMEND-
6 MENTS.—Section 31 of the Investment Company Act of
7 1940 (15 U.S.C. 80a–30) is amended—

8 (1) in subsection (a)(1), by adding at the end
9 the following: “Each person with custody or use of
10 a registered investment company’s securities, depos-
11 its, or credits shall maintain and preserve all records
12 that relate to the person’s custody or use of the reg-
13 istered investment company’s securities, deposits, or
14 credits for such period or periods as the Commis-
15 sion, by rules and regulations, may prescribe as nec-
16 essary or appropriate in the public interest or for
17 the protection of investors.”; and

18 (2) in subsection (b), by adding at the end the
19 following new paragraph:

20 “(4) RECORDS OF PERSONS WITH CUSTODY OR
21 USE.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (1), records of persons with custody or
24 use of a registered investment company’s secu-
25 rities, deposits, or credits, that relate to such

1 custody or use, are subject at any time, or from
2 time to time, to such reasonable periodic, spe-
3 cial, or other examinations and other informa-
4 tion and document requests by representatives
5 of the Commission as the Commission deems
6 necessary or appropriate in the public interest
7 or for the protection of investors.

8 “(B) CERTAIN PERSONS SUBJECT TO
9 OTHER REGULATION.—Persons subject to regu-
10 lation and examination by a Federal financial
11 institution regulatory agency (as such term is
12 defined under section 212(c)(2) of title 18,
13 United States Code) may satisfy any examina-
14 tion request, information request, or document
15 request described under subparagraph (A), by
16 providing the Commission with a detailed list-
17 ing, in writing, of the registered investment
18 company’s securities, deposits, or credits within
19 such person’s custody or use.”.

20 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
21 MENT.—Section 204 of the Investment Advisers Act of
22 1940 (15 U.S.C. 80b–4) is amended by adding at the end
23 the following new subsection:

24 “(d) RECORDS OF PERSONS WITH CUSTODY OR
25 USE.—

1 “(1) IN GENERAL.—Records of persons with
2 custody or use of a client’s securities, deposits, or
3 credits, that relate to such custody or use, are sub-
4 ject at any time, or from time to time, to such rea-
5 sonable periodic, special, or other examinations and
6 other information and document requests by rep-
7 resentatives of the Commission as the Commission
8 deems necessary or appropriate in the public interest
9 or for the protection of investors.

10 “(2) CERTAIN PERSONS SUBJECT TO OTHER
11 REGULATION.—Persons subject to regulation and ex-
12 amination by a Federal financial institution regu-
13 latory agency (as such term is defined under section
14 212(c)(2) of title 18, United States Code) may sat-
15 isfy any examination request, information request,
16 or document request described under paragraph (1),
17 by providing the Commission with a detailed listing,
18 in writing, of the client’s securities, deposits, or
19 credits within such person’s custody or use.”.

20 **SEC. 7107. STUDY ON ENHANCING INVESTMENT ADVISER**
21 **EXAMINATIONS.**

22 (a) STUDY REQUIRED.—

23 (1) IN GENERAL.—The Commission shall review
24 and analyze the need for enhanced examination and
25 enforcement resources for investment advisers.

1 (2) AREAS OF CONSIDERATION.—The study re-
2 quired by this subsection shall examine—

3 (A) the number and frequency of examina-
4 tions of investment advisers by the Commission
5 over the 5 years preceding the date of the en-
6 actment of this subtitle;

7 (B) the extent to which having Congress
8 authorize the Commission to designate one or
9 more self-regulatory organizations to augment
10 the Commission's efforts in overseeing invest-
11 ment advisers would improve the frequency of
12 examinations of investment advisers; and

13 (C) current and potential approaches to ex-
14 amining the investment advisory activities of
15 dually registered broker-dealers and investment
16 advisers or affiliated broker-dealers and invest-
17 ment advisers.

18 (b) REPORT REQUIRED.—The Commission shall re-
19 port its findings to the Committee on Financial Services
20 of the House of Representatives and the Committee on
21 Banking, Housing, and Urban Affairs of the Senate, not
22 later than 180 days after the date of enactment of this
23 subtitle, and shall use such findings to revise its rules and
24 regulations, as necessary. The report shall include a dis-
25 cussion of regulatory or legislative steps that are rec-

1 ommended or that may be necessary to address concerns
2 identified in the study.

3 **SEC. 7108. GAO STUDY OF FINANCIAL PLANNING.**

4 (a) STUDY REQUIRED.—The Comptroller General of
5 the United States shall conduct a study on the regulation
6 and oversight of financial planning. The study shall con-
7 sider—

8 (1) the unique role of financial planners in pro-
9 viding comprehensive advice in investment planning,
10 income tax planning, education planning, retirement
11 planning, estate planning, risk management, and
12 other areas with respect to the management of fi-
13 nancial resources; and

14 (2) any gaps in the regulation of financial plan-
15 ners given existing State and Federal regulation of
16 financial planning activities and the need to provide
17 related consumer protections for such financial plan-
18 ning activities.

19 (b) REPORT.—Not later than the end of the 180-day
20 period beginning on the date of the enactment of this sub-
21 title, the Comptroller General of the United States shall
22 submit to the Congress a report containing the findings
23 and determinations made by the Comptroller General in
24 carrying out the study required under subsection (a), in-
25 cluding recommendations for the appropriate regulation

1 of, or standards for, financial planners as a profession and
2 how such regulations or standards should be established.

3 **PART 2—ENFORCEMENT AND REMEDIES**

4 **SEC. 7201. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
5 **PUTE ARBITRATION.**

6 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
7 1934.—Section 15 of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o), as amended by section 7103, is further
9 amended by adding at the end the following new sub-
10 section:

11 “(p) AUTHORITY TO RESTRICT MANDATORY PRE-
12 DISPUTE ARBITRATION.—The Commission, by rule, may
13 prohibit, or impose conditions or limitations on the use
14 of, agreements that require customers or clients of any
15 broker, dealer, or municipal securities dealer to arbitrate
16 any future dispute between them arising under the Fed-
17 eral securities laws, the rules and regulations thereunder,
18 or the rules of a self-regulatory organization if it finds
19 that such prohibition, imposition of conditions, or limita-
20 tions are in the public interest and for the protection of
21 investors.”.

22 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
23 1940.—Section 205 of the Investment Advisers Act of
24 1940 (15 U.S.C. 80b–5) is amended by adding at the end
25 the following new subsection:

1 “(f) AUTHORITY TO RESTRICT MANDATORY PRE-
2 DISPUTE ARBITRATION.—The Commission, by rule, may
3 prohibit, or impose conditions or limitations on the use
4 of, agreements that require customers or clients of any
5 investment adviser to arbitrate any future dispute between
6 them arising under the Federal securities laws, the rules
7 and regulations thereunder, or the rules of a self-regu-
8 latory organization if it finds that such prohibition, im-
9 sition of conditions, or limitations are in the public inter-
10 est and for the protection of investors.”.

11 **SEC. 7202. COMPTROLLER GENERAL STUDY TO REVIEW SE-**
12 **CURITIES ARBITRATION SYSTEM.**

13 (a) STUDY.—The Comptroller General of the United
14 States shall conduct a study to review—

15 (1) the costs to parties of an arbitration pro-
16 ceeding using the arbitration system operated by the
17 Financial Industry Regulatory Authority and over-
18 seen by the Securities and Exchange Commission as
19 compared to litigation;

20 (2) the percentage of recovery of the total
21 amount of a claim in an arbitration proceeding using
22 the arbitration system operated by the Financial In-
23 dustry Regulatory Authority and overseen by the Se-
24 curities and Exchange Commission; and

1 (3) other additional issues as may be raised
2 during the course of the study conducted under this
3 subsection.

4 (b) REPORT.—Not later than 1 year after the date
5 of enactment of this subtitle, the Comptroller General of
6 the United States shall submit to the Committee on Fi-
7 nancial Services of the House of Representatives and the
8 Committee on Banking, Housing, and Urban Affairs of
9 the Senate a report on the results of the study required
10 by subsection (a), including in such report recommenda-
11 tions for improvements to the arbitration system ref-
12 erenced in such subsection.

13 **SEC. 7203. WHISTLEBLOWER PROTECTION.**

14 (a) IN GENERAL.—The Securities Exchange Act of
15 1934 (15 U.S.C. 78a et seq.) is amended by adding after
16 section 21E the following new section:

17 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
18 **PROTECTION.**

19 “(a) IN GENERAL.—In any judicial or administrative
20 action brought by the Commission under the securities
21 laws that results in monetary sanctions exceeding
22 \$1,000,000, the Commission, under regulations prescribed
23 by the Commission and subject to subsection (b), may pay
24 an award or awards not exceeding an amount equal to 30
25 percent, in total, of the monetary sanctions imposed in the

1 action or related actions to one or more whistleblowers
2 who voluntarily provided original information to the Com-
3 mission that led to the successful enforcement of the ac-
4 tion. Any amount payable under the preceding sentence
5 shall be paid from the fund described in subsection (f).

6 “(b) DETERMINATION OF AMOUNT OF AWARD; DE-
7 NIAL OF AWARD.—

8 “(1) DETERMINATION OF AMOUNT OF
9 AWARD.—The determination of the amount of an
10 award, within the limit specified in subsection (a),
11 shall be in the sole discretion of the Commission.
12 The Commission may take into account the signifi-
13 cance of the whistleblower’s information to the suc-
14 cess of the judicial or administrative action described
15 in subsection (a), the degree of assistance provided
16 by the whistleblower and any legal representative of
17 the whistleblower in such action, the Commission’s
18 programmatic interest in deterring violations of the
19 securities laws by making awards to whistleblowers
20 who provide information that leads to the successful
21 enforcement of such laws, and such additional fac-
22 tors as the Commission may establish by rules or
23 regulations.

24 “(2) DENIAL OF AWARD.—No award under
25 subsection (a) shall be made—

1 “(A) to any whistleblower who is, or was at
2 the time he or she acquired the original infor-
3 mation submitted to the Commission, a mem-
4 ber, officer, or employee of any appropriate reg-
5 ulatory agency, the Department of Justice, the
6 Public Company Accounting Oversight Board,
7 law enforcement agency, or a self-regulatory or-
8 ganization;

9 “(B) to any whistleblower who is convicted
10 of a criminal violation related to the judicial or
11 administrative action for which the whistle-
12 blower otherwise could receive an award under
13 this section;

14 “(C) to any whistleblower who gains the
15 information through the performance of an
16 audit of financial statements required under the
17 securities laws; or

18 “(D) to any whistleblower who fails to sub-
19 mit information to the Commission in such
20 form as the Commission may, by rule, require.

21 “(c) REPRESENTATION.—

22 “(1) PERMITTED REPRESENTATION.—Any
23 whistleblower who makes a claim for an award under
24 subsection (a) may be represented by counsel.

1 “(2) REQUIRED REPRESENTATION.—Any whis-
2 tleblower who makes a claim for an award under
3 subsection (a) must be represented by counsel if the
4 whistleblower submits the information upon which
5 the claim is based anonymously. Prior to the pay-
6 ment of an award, the whistleblower must disclose
7 his or her identity and provide such other informa-
8 tion as the Commission may require.

9 “(d) NO CONTRACT NECESSARY.—No contract with
10 the Commission is necessary for any whistleblower to re-
11 ceive an award under subsection (a), unless the Commis-
12 sion, by rule or regulation, so requires.

13 “(e) APPEALS.—Any determinations under this sec-
14 tion, including whether, to whom, or in what amounts to
15 make awards, shall be in the sole discretion of the Com-
16 mission, and any such determinations shall be final and
17 not subject to judicial review.

18 “(f) INVESTOR PROTECTION FUND.—

19 “(1) FUND ESTABLISHED.—There is estab-
20 lished in the Treasury of the United States a fund
21 to be known as the ‘Securities and Exchange Com-
22 mission Investor Protection Fund’ (referred to in
23 this section as the ‘Fund’).

24 “(2) USE OF FUND.—The Fund shall be avail-
25 able to the Commission, without further appropria-

1 tion or fiscal year limitation, for the following pur-
2 poses:

3 “(A) Paying awards to whistleblowers as
4 provided in subsection (a).

5 “(B) Funding investor education initiatives
6 designed to help investors protect themselves
7 against securities fraud or other violations of
8 the securities laws, or the rules and regulations
9 thereunder.

10 “(3) DEPOSITS AND CREDITS.—There shall be
11 deposited into or credited to the Fund—

12 “(A) any monetary sanction collected by
13 the Commission in any judicial or administra-
14 tive action brought by the Commission under
15 the securities laws that is not added to a
16 disgorgement fund or other fund pursuant to
17 section 308 of the Sarbanes-Oxley Act of 2002
18 or otherwise distributed to victims of a violation
19 of the securities laws, or the rules and regula-
20 tions thereunder, underlying such action, unless
21 the balance of the Fund at the time the mone-
22 tary sanction is collected exceeds \$100,000,000;

23 “(B) any monetary sanction added to a
24 disgorgement fund or other fund pursuant to
25 section 308 of the Sarbanes-Oxley Act of 2002

1 that is not distributed to the victims for whom
2 the disgorgement fund or other fund was estab-
3 lished, unless the balance of the Fund at the
4 time the determination is made not to dis-
5 tribute the monetary sanction to such victims
6 exceeds \$100,000,000; and

7 “(C) all income from investments made
8 under paragraph (4).

9 “(4) INVESTMENTS.—

10 “(A) AMOUNTS IN FUND MAY BE IN-
11 VESTED.—The Commission may request the
12 Secretary of the Treasury to invest the portion
13 of the Fund that is not, in the Commission’s
14 judgment, required to meet the current needs of
15 the Fund.

16 “(B) ELIGIBLE INVESTMENTS.—Invest-
17 ments shall be made by the Secretary of the
18 Treasury in obligations of the United States or
19 obligations that are guaranteed as to principal
20 and interest by the United States, with matu-
21 rities suitable to the needs of the Fund as de-
22 termined by the Commission.

23 “(C) INTEREST AND PROCEEDS CRED-
24 ITED.—The interest on, and the proceeds from
25 the sale or redemption of, any obligations held

1 in the Fund shall be credited to, and form a
2 part of, the Fund.

3 “(5) REPORTS TO CONGRESS.—Not later than
4 October 30 of each year, the Commission shall
5 transmit to the Committee on Banking, Housing,
6 and Urban Affairs of the Senate, and the Committee
7 on Financial Services of the House of Representa-
8 tives a report on—

9 “(A) the Commission’s whistleblower
10 award program under this section, including a
11 description of the number of awards that were
12 granted and the types of cases in which awards
13 were granted during the preceding fiscal year;

14 “(B) investor education initiatives de-
15 scribed in paragraph (2)(B) that were funded
16 by the Fund during the preceding fiscal year;

17 “(C) the balance of the Fund at the begin-
18 ning of the preceding fiscal year;

19 “(D) the amounts deposited into or cred-
20 ited to the Fund during the preceding fiscal
21 year;

22 “(E) the amount of earnings on invest-
23 ments of amounts in the Fund during the pre-
24 ceding fiscal year;

1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (a);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for investor edu-
6 cation initiatives described in paragraph (1)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(g) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—No employer may dis-
15 charge, demote, suspend, threaten, harass, or in
16 any other manner discriminate against an em-
17 ployee, contractor, or agent in the terms and
18 conditions of employment because of any lawful
19 act done by the employee, contractor, or agent
20 in providing information to the Commission in
21 accordance with subsection (a), or in assisting
22 in any investigation or judicial or administrative
23 action of the Commission based upon or related
24 to such information.

25 “(B) ENFORCEMENT.—

1 “(i) CAUSE OF ACTION.—An indi-
2 vidual who alleges discharge or other dis-
3 crimination in violation of subparagraph
4 (A) may bring an action under this sub-
5 section in the appropriate district court of
6 the United States for the relief provided in
7 subparagraph (C).

8 “(ii) SUBPOENAS.—A subpoena re-
9 quiring the attendance of a witness at a
10 trial or hearing conducted under this sec-
11 tion may be served at any place in the
12 United States.

13 “(iii) STATUTE OF LIMITATIONS.—An
14 action under this subsection may not be
15 brought more than 6 years after the date
16 on which the violation of subparagraph (A)
17 occurred, or more than 3 years after the
18 date when facts material to the right of ac-
19 tion are known or reasonably should have
20 been known by the employee alleging a vio-
21 lation of subparagraph (A), but in no event
22 after 10 years after the date on which the
23 violation occurs.

24 “(C) RELIEF.—An employee, contractor,
25 or agent prevailing in any action brought under

1 subparagraph (B) shall be entitled to all relief
2 necessary to make that employee, contractor, or
3 agent whole, including reinstatement with the
4 same seniority status that the employee, con-
5 tractor, or agent would have had, but for the
6 discrimination, 2 times the amount of back pay,
7 with interest, and compensation for any special
8 damages sustained as a result of the discrimi-
9 nation, including litigation costs, expert witness
10 fees, and reasonable attorneys' fees.

11 “(2) CONFIDENTIALITY.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), the Commission and any of-
14 ficer or employee of the Commission shall not
15 disclose any information, including information
16 provided by a whistleblower to the Commission,
17 which could reasonably be expected to reveal
18 the identity of a whistleblower, except in ac-
19 cordance with the provisions of section 552a of
20 title 5, United States Code, unless and until re-
21 quired to be disclosed to a defendant or re-
22 spondent in connection with a public proceeding
23 instituted by the Commission or any entity de-
24 scribed in subparagraph (B). For purposes of
25 section 552 of title 5, United States Code, this

1 paragraph shall be considered a statute de-
2 scribed in subsection (b)(3)(B) of such section
3 552.

4 “(B) AVAILABILITY TO GOVERNMENT
5 AGENCIES.—Without the loss of its status as
6 confidential and privileged in the hands of the
7 Commission, all information referred to in sub-
8 paragraph (A) may, in the discretion of the
9 Commission, when determined by the Commis-
10 sion to be necessary to accomplish the purposes
11 of this Act and protect investors, be made avail-
12 able to—

13 “(i) the Attorney General of the
14 United States,

15 “(ii) an appropriate regulatory au-
16 thority,

17 “(iii) a self-regulatory organization,

18 “(iv) State attorneys general in con-
19 nection with any criminal investigation,
20 and

21 “(v) any appropriate State regulatory
22 authority,

23 each of which shall not disclose such informa-
24 tion in accordance with subparagraph (A).

1 “(h) PROVISION OF FALSE INFORMATION.—Any
2 whistleblower who knowingly and willfully makes any
3 false, fictitious, or fraudulent statement or representation,
4 or makes or uses any false writing or document knowing
5 the same to contain any false, fictitious, or fraudulent
6 statement or entry, shall not be entitled to an award under
7 this section.

8 “(i) RULEMAKING AUTHORITY.—The Commission
9 shall have the authority to issue such rules and regulations
10 as may be necessary or appropriate to implement the pro-
11 visions of this section.

12 “(j) DEFINITIONS.—For purposes of this section, the
13 following terms have the following meanings:

14 “(1) ORIGINAL INFORMATION.—The term
15 ‘original information’ means information that—

16 “(A) is based on the direct and inde-
17 pendent knowledge or analysis of a whistle-
18 blower;

19 “(B) is not known to the Commission from
20 any other source, unless the whistleblower is the
21 initial source of the information; and

22 “(C) is not based on allegations in a judi-
23 cial or administrative hearing, in a govern-
24 mental report, hearing, audit, or investigation,
25 or from the news media, unless the whistle-

1 blower is the initial source of the information
2 that resulted in the judicial or administrative
3 hearing, governmental report, hearing, audit, or
4 investigation, or the news media's report on the
5 allegations.

6 “(2) MONETARY SANCTIONS.—The term ‘mone-
7 tary sanctions’, when used with respect to any judi-
8 cial or administrative action, means any monies, in-
9 cluding but not limited to penalties, disgorgement,
10 and interest, ordered to be paid, and any monies de-
11 posited into a disgorgement fund or other fund pur-
12 suant to section 308(b) of the Sarbanes-Oxley Act of
13 2002 (15 U.S.C. 7246(b)), as a result of such action
14 or any settlement of such action.

15 “(3) RELATED ACTION.—The term ‘related ac-
16 tion’, when used with respect to any judicial or ad-
17 ministrative action brought by the Commission
18 under the securities laws, means any judicial or ad-
19 ministrative action brought by an entity described in
20 subsection (g)(2)(B) that is based upon the same
21 original information provided by a whistleblower
22 pursuant to subsection (a) that led to the successful
23 enforcement of the Commission action.

24 “(4) WHISTLEBLOWER.—The term ‘whistle-
25 blower’ means an individual, or two or more individ-

1 uals acting jointly, who submit information to the
 2 Commission as provided in this section.”.

3 (b) ADMINISTRATION AND ENFORCEMENT.—The Se-
 4 curities and Exchange Commission shall establish a sepa-
 5 rate office within the Commission to administer and en-
 6 force the provisions of section 21F of the Securities Ex-
 7 change Act of 1934, as added by subsection (a). Such of-
 8 fice shall report annually to Congress on its activities,
 9 whistleblower complaints, and the response of the Com-
 10 mission to such complaints.

11 **SEC. 7204. CONFORMING AMENDMENTS FOR WHISTLE-**
 12 **BLOWER PROTECTION.**

13 (a) IN GENERAL.—Each of the following provisions
 14 is amended by inserting “and section 21F of the Securities
 15 Exchange Act of 1934” after “the Sarbanes-Oxley Act of
 16 2002”:

17 (1) Section 20(d)(3)(A) of the Securities Act of
 18 1933 (15 U.S.C. 77t(d)(3)(A)).

19 (2) Section 42(e)(3)(A) of the Investment Com-
 20 pany Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

21 (3) Section 209(e)(3)(A) of the Investment Ad-
 22 visers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

23 (b) SECURITIES EXCHANGE ACT.—The Securities
 24 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amend-
 25 ed—

1 (1) in section 21(d)(3)(C)(i) (15 U.S.C.
 2 78u(d)(3)(C)(i)), by inserting “and section 21F of
 3 this title” after “the Sarbanes-Oxley Act of 2002”;

4 (2) in section 21A(d)(1) (15 U.S.C. 78u–
 5 1(d)(1))—

6 (A) by striking “(subject to subsection
 7 (e))”; and

8 (B) by inserting “and section 21F of this
 9 title” after “the Sarbanes-Oxley Act of 2002”;
 10 and

11 (3) in section 21A, by striking subsection (e)
 12 and redesignating subsections (f) and (g) as sub-
 13 sections (e) and (f), respectively.

14 **SEC. 7205. IMPLEMENTATION AND TRANSITION PROVI-**
 15 **SIONS FOR WHISTLEBLOWER PROTECTIONS.**

16 (a) **IMPLEMENTING RULES.**—The Securities and Ex-
 17 change Commission shall issue final regulations imple-
 18 menting the provisions of section 21F of the Securities
 19 Exchange Act of 1934, as added by this part, no later
 20 than 270 days after the date of enactment of this subtitle.

21 (b) **ORIGINAL INFORMATION.**—Information sub-
 22 mitted to the Commission by a whistleblower in accord-
 23 ance with regulations implementing the provisions of sec-
 24 tion 21F of the Securities Exchange Act of 1934, as added
 25 by this part, shall not lose its status as original informa-

1 tion, as defined in subsection (i)(1) of such section, solely
2 because the whistleblower submitted such information
3 prior to the effective date of such regulations, provided
4 such information was submitted after the date of enact-
5 ment of this subtitle, or related to insider trading viola-
6 tions for which a bounty could have been paid at the time
7 such information was submitted.

8 (c) AWARDS.—A whistleblower may receive an award
9 pursuant to section 21F of the Securities Exchange Act
10 of 1934, as added by this part, regardless of whether any
11 violation of a provision of the securities laws, or a rule
12 or regulation thereunder, underlying the judicial or admin-
13 istrative action upon which the award is based occurred
14 prior to the date of enactment of this subtitle.

15 **SEC. 7206. COLLATERAL BARS.**

16 (a) SECTION 15 OF THE SECURITIES EXCHANGE ACT
17 OF 1934.—Section 15(b)(6)(A) of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended
19 by striking “12 months, or bar such person from being
20 associated with a broker or dealer,” and inserting “12
21 months, or bar any such person from being associated with
22 a broker, dealer, investment adviser, municipal securities
23 dealer, transfer agent, municipal financial adviser, or na-
24 tionally recognized statistical rating organization,”.

1 (b) SECTION 15B OF THE SECURITIES EXCHANGE
2 ACT OF 1934.—Section 15B(c)(4) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended
4 by striking “twelve months or bar any such person from
5 being associated with a municipal securities dealer,” and
6 inserting “12 months or bar any such person from being
7 associated with a broker, dealer, investment adviser, mu-
8 nicipal securities dealer, transfer agent, municipal finan-
9 cial adviser, or nationally recognized statistical rating or-
10 ganization,”.

11 (c) SECTION 17A OF THE SECURITIES EXCHANGE
12 ACT OF 1934.—Section 17A(c)(4)(C) of the Securities
13 Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is
14 amended by striking “twelve months or bar any such per-
15 son from being associated with the transfer agent,” and
16 inserting “12 months or bar any such person from being
17 associated with any transfer agent, broker, dealer, invest-
18 ment adviser, municipal securities dealer, municipal finan-
19 cial adviser, or nationally recognized statistical rating or-
20 ganization,”.

21 (d) SECTION 203 OF THE INVESTMENT ADVISERS
22 ACT OF 1940.—Section 203(f) of the Investment Advisers
23 Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking
24 “twelve months or bar any such person from being associ-
25 ated with an investment adviser,” and inserting “12

1 months or bar any such person from being associated with
2 an investment adviser, broker, dealer, municipal securities
3 dealer, transfer agent, municipal financial adviser, or na-
4 tionally recognized statistical rating organization.”.

5 **SEC. 7207. AIDING AND ABETTING AUTHORITY UNDER THE**
6 **SECURITIES ACT AND THE INVESTMENT COM-**
7 **PANY ACT.**

8 (a) UNDER THE SECURITIES ACT OF 1933.—Section
9 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
10 amended—

11 (1) by striking “Every person who” and insert-
12 ing “(a) CONTROLLING PERSONS.—Every person
13 who”; and

14 (2) by adding at the end the following:

15 “(b) PROSECUTION OF PERSONS WHO AID AND
16 ABET VIOLATIONS.—For purposes of any action brought
17 by the Commission under subparagraph (b) or (d) of sec-
18 tion 20, any person that knowingly or recklessly provides
19 substantial assistance to another person in violation of a
20 provision of this Act, or of any rule or regulation issued
21 under this Act, shall be deemed to be in violation of such
22 provision to the same extent as the person to whom such
23 assistance is provided.”.

24 (b) UNDER THE INVESTMENT COMPANY ACT OF
25 1940.—Section 48 of the Investment Company Act of

1 1940 (15 U.S.C. 80a–48) is amended by redesignating
2 subsection (b) as subsection (c) and inserting after sub-
3 section (a) the following:

4 “(b) For purposes of any action brought by the Com-
5 mission under subsection (d) or (e) of section 42, any per-
6 son that knowingly or recklessly provides substantial as-
7 sistance to another person in violation of a provision of
8 this Act, or of any rule or regulation issued under this
9 Act, shall be deemed to be in violation of such provision
10 to the same extent as the person to whom such assistance
11 is provided.”.

12 **SEC. 7208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
13 **AND ABETTING VIOLATIONS OF THE INVEST-**
14 **MENT ADVISERS ACT.**

15 Section 209 of the Investment Advisers Act of 1940
16 (15 U.S.C. 80b–9) is amended by inserting at the end the
17 following new subsection:

18 “(f) AIDING AND ABETTING.—For purposes of any
19 action brought by the Commission under subsection (e),
20 any person that knowingly or recklessly has aided, abetted,
21 counseled, commanded, induced, or procured a violation
22 of any provision of this Act, or of any rule, regulation,
23 or order hereunder, shall be deemed to be in violation of
24 such provision, rule, regulation, or order to the same ex-
25 tent as the person that committed such violation.”.

1 **SEC. 7209. DEADLINE FOR COMPLETING EXAMINATIONS,**
2 **INSPECTIONS AND ENFORCEMENT ACTIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.) is amended by inserting after section 4D (as added
5 by section 7101) the following new section:

6 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
7 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
8 **TIONS AND INSPECTIONS.**

9 “(a) ENFORCEMENT INVESTIGATIONS.—

10 “(1) IN GENERAL.—Not later than 180 days
11 after the date on which Commission staff provide a
12 written Wells notification to any person, the Com-
13 mission staff shall either file an action against such
14 person or provide notice to the Director of the Divi-
15 sion of Enforcement of its intent to not file an ac-
16 tion.

17 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
18 TIONS.—Notwithstanding paragraph (1), if the Di-
19 rector of the Division of Enforcement of the Com-
20 mission or the Director’s designee determines that a
21 particular enforcement investigation is sufficiently
22 complex such that a determination regarding the fil-
23 ing of an action against a person cannot be com-
24 pleted within the deadline specified in paragraph (1),
25 the Director of the Division of Enforcement of the
26 Commission or the Director’s designee may, after

1 providing notice to the Chairman of the Commission,
2 extend such deadline as needed for one additional
3 180-day period. If after the additional 180-day pe-
4 riod the Director of the Division of Enforcement of
5 the Commission or the Director's designee deter-
6 mines that a particular enforcement investigation is
7 sufficiently complex such that a determination re-
8 garding the filing of an action against a person can-
9 not be completed within the additional 180-day pe-
10 riod, the Director of the Division of Enforcement of
11 the Commission or the Director's designee may,
12 after providing notice to and receiving approval of
13 the Commission, extend such deadline as needed for
14 one or more additional successive 180-day periods.

15 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
16 TIONS.—

17 “(1) IN GENERAL.—Not later than 180 days
18 after the date on which Commission staff completes
19 the on-site portion of its compliance examination or
20 inspection or receives all records requested from the
21 entity being examined or inspected, whichever is
22 later, Commission staff shall provide the entity being
23 examined or inspected with written notification indi-
24 cating either that the examination or inspection has
25 concluded, has concluded without findings, or that

1 the staff requests the entity undertake corrective ac-
2 tion.

3 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
4 TIONS.—Notwithstanding paragraph (1), if the head
5 of any division or office within the Commission re-
6 sponsible for compliance examinations and inspec-
7 tions or his designee determines that a particular
8 compliance examination or inspection is sufficiently
9 complex such that a determination regarding con-
10 cluding the examination or inspection, or regarding
11 the staff requests the entity undertake corrective ac-
12 tion, cannot be completed within the deadline speci-
13 fied in paragraph (1), the head of any division or of-
14 fice within the Commission responsible for compli-
15 ance examinations and inspections or his designee
16 may, after providing notice to the Chairman of the
17 Commission, extend such deadline as needed for one
18 additional 180-day period.”.

19 **SEC. 7210. NATIONWIDE SERVICE OF SUBPOENAS.**

20 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
21 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
22 inserting after the second sentence the following: “In any
23 civil action instituted by the Commission under this title
24 in a United States district court for any judicial district,
25 subpoenas issued to compel the attendance of witnesses

1 or the production of documents or tangible things (or
2 both) at any hearing or trial may be served at any place
3 within the United States. Rule 45(c)(3)(A)(ii) of the Fed-
4 eral Rules of Civil Procedure does not apply to a subpoena
5 so issued.”.

6 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
7 27 of the Securities Exchange Act of 1934 (15 U.S.C.
8 78aa) is amended by inserting after the third sentence the
9 following: “In any civil action instituted by the Commis-
10 sion under this title in a United States district court for
11 any judicial district, subpoenas issued to compel the at-
12 tendance of witnesses or the production of documents or
13 tangible things (or both) at any hearing or trial may be
14 served at any place within the United States. Rule
15 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
16 does not apply to a subpoena so issued.”.

17 (c) INVESTMENT COMPANY ACT OF 1940.—Section
18 44 of the Investment Company Act of 1940 (15 U.S.C.
19 80a–43) is amended by inserting after the fourth sentence
20 the following: “In any civil action instituted by the Com-
21 mission under this title in a United States district court
22 for any judicial district, subpoenas issued to compel the
23 attendance of witnesses or the production of documents
24 or tangible things (or both) at any hearing or trial may
25 be served at any place within the United States. Rule

1 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
 2 does not apply to a subpoena so issued.”.

3 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
 4 214 of the Investment Advisers Act of 1940 (15 U.S.C.
 5 80b–14) is amended by inserting after the third sentence
 6 the following: “In any civil action instituted by the Com-
 7 mission under this title in a United States district court
 8 for any judicial district, subpoenas issued to compel the
 9 attendance of witnesses or the production of documents
 10 or tangible things (or both) at any hearing or trial may
 11 be served at any place within the United States. Rule
 12 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
 13 does not apply to a subpoena so issued.”.

14 **SEC. 7211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**
 15 **CEASE AND DESIST PROCEEDINGS.**

16 (a) UNDER THE SECURITIES ACT OF 1933.—Section
 17 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is
 18 amended by adding at the end the following new sub-
 19 section:

20 “(g) AUTHORITY TO IMPOSE MONETARY PEN-
 21 ALTIES.—

22 “(1) GROUNDS FOR IMPOSING.—In any cease-
 23 and-desist proceeding under subsection (a), the
 24 Commission may impose a civil penalty on a person

1 if it finds, on the record after notice and opportunity
2 for hearing, that—

3 “(A) such person—

4 “(i) is violating or has violated any
5 provision of this title, or any rule or regu-
6 lation thereunder; or

7 “(ii) is or was a cause of the violation
8 of any provision of this title, or any rule or
9 regulation thereunder; and

10 “(B) such penalty is in the public interest.

11 “(2) MAXIMUM AMOUNT OF PENALTY.—

12 “(A) FIRST TIER.—The maximum amount
13 of penalty for each act or omission described in
14 paragraph (1) shall be \$7,500 for a natural
15 person or \$75,000 for any other person.

16 “(B) SECOND TIER.—Notwithstanding
17 paragraph (A), the maximum amount of pen-
18 alty for each such act or omission shall be
19 \$75,000 for a natural person or \$375,000 for
20 any other person if the act or omission de-
21 scribed in paragraph (1) involved fraud, deceit,
22 manipulation, or deliberate or reckless dis-
23 regard of a regulatory requirement.

24 “(C) THIRD TIER.—Notwithstanding para-
25 graphs (A) and (B), the maximum amount of

1 penalty for each such act or omission shall be
2 \$150,000 for a natural person or \$725,000 for
3 any other person if—

4 “(i) the act or omission described in
5 paragraph (1) involved fraud, deceit, ma-
6 nipulation, or deliberate or reckless dis-
7 regard of a regulatory requirement; and

8 “(ii) such act or omission directly or
9 indirectly resulted in substantial losses or
10 created a significant risk of substantial
11 losses to other persons or resulted in sub-
12 stantial pecuniary gain to the person who
13 committed the act or omission.

14 “(3) EVIDENCE CONCERNING ABILITY TO
15 PAY.—In any proceeding in which the Commission
16 may impose a penalty under this section, a respond-
17 ent may present evidence of the respondent’s ability
18 to pay such penalty. The Commission may, in its
19 discretion, consider such evidence in determining
20 whether such penalty is in the public interest. Such
21 evidence may relate to the extent of such person’s
22 ability to continue in business and the collectability
23 of a penalty, taking into account any other claims of
24 the United States or third parties upon such per-

1 son's assets and the amount of such person's as-
2 sets.”.

3 (b) UNDER THE SECURITIES EXCHANGE ACT OF
4 1934.—Subsection (a) of section 21B of the Securities
5 Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amend-
6 ed—

7 (1) by striking “(a) COMMISSION AUTHORITY
8 TO ASSESS MONEY PENALTIES.—In any pro-
9 ceeding” and inserting the following:

10 “(a) COMMISSION AUTHORITY TO ASSESS MONE-
11 TARY PENALTIES.—

12 “(1) IN GENERAL.—In any proceeding”;

13 (2) by redesignating paragraphs (1) through
14 (4) of such subsection as subparagraphs (A) through
15 (D), respectively, and moving such redesignated sub-
16 paragraphs and the matter following such subpara-
17 graphs 2 ems to the right; and

18 (3) by adding at the end of such subsection the
19 following new paragraph:

20 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
21 any proceeding instituted pursuant to section 21C of
22 this title against any person, the Commission may
23 impose a civil penalty if it finds, on the record after
24 notice and opportunity for hearing, that such per-
25 son—

1 “(A) is violating or has violated any provi-
 2 sion of this title, or any rule or regulation
 3 thereunder; or

4 “(B) is or was a cause of the violation of
 5 any provision of this title, or any rule or regula-
 6 tion thereunder.”.

7 (c) UNDER THE INVESTMENT COMPANY ACT OF
 8 1940.—Paragraph (1) of section 9(d) of the Investment
 9 Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amend-
 10 ed—

11 (1) by striking “(1) AUTHORITY OF COMMIS-
 12 SION.—In any proceeding” and inserting the fol-
 13 lowing:

14 “(1) AUTHORITY OF COMMISSION.—

15 “(A) IN GENERAL.—In any proceeding”;

16 (2) by redesignating subparagraphs (A) through
 17 (C) of such paragraph as clauses (i) through (iii),
 18 respectively, and by moving such redesignated
 19 clauses and the matter following such subparagraphs
 20 2 ems to the right; and

21 (3) by adding at the end of such paragraph the
 22 following new subparagraph:

23 “(B) CEASE-AND-DESIST PROCEEDINGS.—

24 In any proceeding instituted pursuant to sub-
 25 section (f) against any person, the Commission

1 may impose a civil penalty if it finds, on the
2 record after notice and opportunity for hearing,
3 that such person—

4 “(i) is violating or has violated any
5 provision of this title, or any rule or regu-
6 lation thereunder; or

7 “(ii) is or was a cause of the violation
8 of any provision of this title, or any rule or
9 regulation thereunder.”.

10 (d) UNDER THE INVESTMENT ADVISERS ACT OF
11 1940.—Paragraph (1) of section 203(i) of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
13 ed—

14 (1) by striking “(1) AUTHORITY OF COMMIS-
15 SION.—In any proceeding” and inserting the fol-
16 lowing:

17 “(1) AUTHORITY OF COMMISSION.—

18 “(A) IN GENERAL.—In any proceeding”;

19 (2) by redesignating subparagraphs (A) through
20 (D) of such paragraph as clauses (i) through (iv),
21 respectively, and moving such redesignated clauses
22 and the matter following such subparagraphs 2 ems
23 to the right; and

24 (3) by adding at the end of such paragraph the
25 following new subparagraph:

1 “(B) CEASE-AND-DESIST PROCEEDINGS.—

2 In any proceeding instituted pursuant to sub-
 3 section (k) against any person, the Commission
 4 may impose a civil penalty if it finds, on the
 5 record after notice and opportunity for hearing,
 6 that such person—

7 “(i) is violating or has violated any
 8 provision of this title, or any rule or regu-
 9 lation thereunder; or

10 “(ii) is or was a cause of the violation
 11 of any provision of this title, or any rule or
 12 regulation thereunder.”.

13 **SEC. 7212. FORMERLY ASSOCIATED PERSONS.**

14 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
 15 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
 16 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
 17 4(c)(8)) is amended by striking “any member or em-
 18 ployee” and inserting “any person who is, or at the time
 19 of the alleged misconduct was, a member or employee”.

20 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
 21 CURITIES BROKER OR DEALER.—Section 15C of the Se-
 22 curities Exchange Act of 1934 (15 U.S.C. 78o–5) is
 23 amended—

24 (1) in subsection (c)(1)(C), by striking “or
 25 seeking to become associated,” and inserting “seek-

1 ing to become associated, or, at the time of the al-
2 leged misconduct, associated or seeking to become
3 associated”;

4 (2) in subsection (c)(2)(A), by inserting “, seek-
5 ing to become associated, or, at the time of the al-
6 leged misconduct, associated or seeking to become
7 associated” after “any person associated”; and

8 (3) in subsection (c)(2)(B), by inserting “,
9 seeking to become associated, or, at the time of the
10 alleged misconduct, associated or seeking to become
11 associated” after “any person associated”.

12 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
13 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-
14 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
16 by inserting “, or, as to any act or practice, or omission
17 to act, while associated with a member, formerly associ-
18 ated” after “member or a person associated”.

19 (d) PARTICIPANT OF A REGISTERED CLEARING
20 AGENCY.—Section 21(a)(1) of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
22 ing “or, as to any act or practice, or omission to act, while
23 a participant, was a participant,” after “in which such
24 person is a participant,”.

1 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
2 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

4 (1) by striking “any officer or director” and in-
5 serting “any person who is, or at the time of the al-
6 leged misconduct was, an officer or director”; and

7 (2) by striking “such officer or director” and
8 inserting “such person”.

9 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
10 PANY.—Section 36(a) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–35(a)) is amended—

12 (1) by striking “a person serving or acting” and
13 inserting “a person who is, or at the time of the al-
14 leged misconduct was, serving or acting”; and

15 (2) by striking “such person so serves or acts”
16 and inserting “such person so serves or acts, or at
17 the time of the alleged misconduct, so served or
18 acted”.

19 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
20 ING FIRM.—

21 (1) SARBANES-OXLEY ACT OF 2002 AMEND-
22 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act
23 of 2002 (15 U.S.C. 7201(9)) is amended by adding
24 at the end the following new subparagraph:

1 “(C) INVESTIGATIVE AND ENFORCEMENT
2 AUTHORITY.—For purposes of the provisions of
3 sections 3(c), 101(c), 105, and 107(c) and
4 Board or Commission rules thereunder, except
5 to the extent specifically excepted by such rules,
6 the terms defined in subparagraph (A) shall in-
7 clude any person associated, seeking to become
8 associated, or formerly associated with a public
9 accounting firm, except—

10 “(i) the authority to conduct an inves-
11 tigation of such person under section
12 105(b) shall apply only with respect to any
13 act or practice, or omission to act, while
14 such person was associated or seeking to
15 become associated with a registered public
16 accounting firm; and

17 “(ii) the authority to commence a pro-
18 ceeding under section 105(c)(1), or impose
19 disciplinary sanctions under section
20 105(c)(4), against such person shall apply
21 only on—

22 “(I) the basis of conduct occur-
23 ring while such person was associated
24 or seeking to become associated with
25 a registered public accounting firm; or

1 “(II) non-cooperation as de-
 2 scribed in section 105(b)(3) with re-
 3 spect to a demand in a Board inves-
 4 tigation for testimony, documents, or
 5 other information relating to a period
 6 when such person was associated or
 7 seeking to become associated with a
 8 registered public accounting firm.”.

9 (2) SECURITIES EXCHANGE ACT OF 1934
 10 AMENDMENT.—Section 21(a)(1) of the Securities
 11 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
 12 amended by striking “or a person associated with
 13 such a firm” and inserting “, a person associated
 14 with such a firm, or, as to any act, practice, or omis-
 15 sion to act while associated with such firm, a person
 16 formerly associated with such a firm”.

17 (h) SUPERVISORY PERSONNEL OF AN AUDIT
 18 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
 19 2002 (15 U.S.C. 7215(c)(6)) is amended—

20 (1) in subparagraph (A), by striking “the su-
 21 pervisory personnel” and inserting “any person who
 22 is, or at the time of the alleged failure reasonably to
 23 supervise was, a supervisory person”; and

24 (2) in subparagraph (B)—

1 (A) by striking “No associated person”
 2 and inserting “No current or former super-
 3 visory person”; and

4 (B) by striking “any other person” and in-
 5 serting “any associated person”.

6 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
 7 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
 8 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
 9 striking “any member” and inserting “any person who is,
 10 or at the time of the alleged misconduct was, a member”.

11 **SEC. 7213. SHARING PRIVILEGED INFORMATION WITH**
 12 **OTHER AUTHORITIES.**

13 Section 24 of the Securities Exchange Act of 1934
 14 (15 U.S.C. 78x) is amended—

15 (1) by redesignating subsections (d) and (e) as
 16 subsections (e) and (f), respectively;

17 (2) in subsection (e), as redesignated, by strik-
 18 ing “as provided in subsection (e)” and inserting “as
 19 provided in subsection (f)”;

20 (3) by inserting after subsection (c) the fol-
 21 lowing new subsection:

22 “(d) SHARING PRIVILEGED INFORMATION WITH
 23 OTHER AUTHORITIES.—

24 “(1) PRIVILEGED INFORMATION PROVIDED BY
 25 THE COMMISSION.—The Commission shall not be

1 deemed to have waived any privilege applicable to
2 any information by transferring that information to
3 or permitting that information to be used by—

4 “(A) any agency (as defined in section 6 of
5 title 18, United States Code);

6 “(B) any foreign securities authority;

7 “(C) the Public Company Accounting
8 Oversight Board;

9 “(D) any self-regulatory organization;

10 “(E) any foreign law enforcement author-
11 ity; or

12 “(F) any State securities or law enforce-
13 ment authority.

14 “(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
15 MATION PROVIDED TO THE COMMISSION.—The Com-
16 mission shall not be compelled to disclose privileged
17 information obtained from any foreign securities au-
18 thority, or foreign law enforcement authority, if the
19 authority has in good faith determined and rep-
20 resented to the Commission that the information is
21 privileged.

22 “(3) NON-WAIVER OF PRIVILEGED INFORMA-
23 TION PROVIDED TO THE COMMISSION.—

24 “(A) IN GENERAL.—Federal agencies,
25 State securities and law enforcement authori-

1 ties, self-regulatory organizations, and the Pub-
2 lic Company Accounting Oversight Board shall
3 not be deemed to have waived any privilege ap-
4 plicable to any information by transferring that
5 information to or permitting that information
6 to be used by the Commission.

7 “(B) EXCEPTION WITH RESPECT TO CER-
8 TAIN ACTIONS.—The provisions of subpara-
9 graph (A) shall not apply to a self-regulatory
10 organization or the Public Company Accounting
11 Oversight Board with respect to information
12 used by the Commission in an action against
13 such organization.

14 “(4) DEFINITIONS.—For purposes of this sub-
15 section:

16 “(A) The term ‘privilege’ includes any
17 work-product privilege, attorney-client privilege,
18 governmental privilege, or other privilege recog-
19 nized under Federal, foreign, or State law.

20 “(B) The term ‘foreign law enforcement
21 authority’ means any foreign authority that is
22 empowered under foreign law to detect, inves-
23 tigate or prosecute potential violations of law.

24 “(C) The term ‘State securities or law en-
25 forcement authority’ means the authority of any

1 State or territory that is empowered under
2 State or territory law to detect, investigate or
3 prosecute potential violations of law.”.

4 **SEC. 7214. EXPANDED ACCESS TO GRAND JURY INFORMA-**
5 **TION.**

6 Subsection (b) of section 3322 of title 18, United
7 States Code, is amended—

8 (1) in paragraph (1), by striking “matters oc-
9 ccurring before a grand jury” and inserting “grand
10 jury information obtained”;

11 (2) by redesignating paragraph (2) as para-
12 graph (3);

13 (3) in paragraph (3) (as so redesignated), by
14 inserting “or (2)” after “(1)”; and

15 (4) by inserting after paragraph (1), the fol-
16 lowing new paragraph:

17 “(2) Upon motion of an attorney for the gov-
18 ernment, a court may direct disclosure of grand jury
19 information obtained during an investigation of a se-
20 curities law violation to identified personnel of the
21 Securities and Exchange Commission—

22 “(A) for use in relation to any matter
23 within the jurisdiction of the Commission; or

1 “(B) to assist an attorney for the govern-
2 ment to whom matters have been disclosed
3 under subsection (a).”.

4 **SEC. 7215. AIDING AND ABETTING STANDARD OF KNOWL-**
5 **EDGE SATISFIED BY RECKLESSNESS.**

6 Section 20(e) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly”
8 after “knowingly”.

9 **SEC. 7216. EXTRATERRITORIAL JURISDICTION OF THE**
10 **ANTIFRAUD PROVISIONS OF THE FEDERAL**
11 **SECURITIES LAWS.**

12 (a) UNDER THE SECURITIES ACT OF 1933.—Section
13 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is
14 amended by adding at the end the following new sub-
15 section:

16 “(c) EXTRATERRITORIAL JURISDICTION.—With re-
17 spect to any actions or proceedings brought or instituted
18 by the Commission or the United States, this jurisdiction
19 includes violations of section 17(a) of this title, and all
20 suits in equity and actions at law under that section, in-
21 volving—

22 “(1) conduct within the United States that con-
23 stitutes significant steps in furtherance of the viola-
24 tion, even if the securities transaction occurs outside

1 the United States and involves only foreign inves-
2 tors; or

3 “(2) conduct occurring outside the United
4 States that has a foreseeable substantial effect with-
5 in the United States.”.

6 (b) UNDER THE SECURITIES EXCHANGE ACT OF
7 1934.—Section 27 of the Securities Exchange Act of 1934
8 (15 U.S.C. 78aa) is amended—

9 (1) by striking “The district” and inserting the
10 following:

11 “(a) IN GENERAL.—The district”; and

12 (2) by inserting at the end the following new
13 subsection:

14 “(b) EXTRATERRITORIAL JURISDICTION.—With re-
15 spect to any actions or proceedings brought or instituted
16 by the Commission or the United States, this jurisdiction
17 includes violations of the antifraud provisions of this title,
18 and all suits in equity and actions at law under those pro-
19 visions, involving—

20 “(1) conduct within the United States that con-
21 stitutes significant steps in furtherance of the viola-
22 tion, even if the securities transaction occurs outside
23 the United States and involves only foreign inves-
24 tors; or

1 “(2) conduct occurring outside the United
2 States that has a foreseeable substantial effect with-
3 in the United States.”.

4 (c) UNDER THE INVESTMENT ADVISERS ACT OF
5 1940.—Section 214 of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–14) is amended—

7 (1) by striking “The district” and inserting the
8 following:

9 “(a) IN GENERAL.—The district”; and

10 (2) by inserting at the end the following new
11 subsection:

12 “(b) EXTRATERRITORIAL JURISDICTION.—With re-
13 spect to any actions or proceedings brought or instituted
14 by the Commission or the United States, this jurisdiction
15 includes violations of section 206, and all suits in equity
16 and actions at law under that section, involving—

17 “(1) conduct within the United States that con-
18 stitutes significant steps in furtherance of the viola-
19 tion, even if the violation is committed by a foreign
20 adviser and involves only foreign investors; or

21 “(2) conduct occurring outside the United
22 States that has a foreseeable substantial effect with-
23 in the United States.”.

1 **SEC. 7217. FIDELITY BONDING.**

2 Section 17(g) of the Investment Company Act of
3 1940 (15 U.S.C. 80a–17(g)) is amended to read as fol-
4 lows:

5 “(g) FIDELITY BONDING.—

6 “(1) IN GENERAL.—The Commission is author-
7 ized to require that a registered management com-
8 pany provide and maintain a fidelity bond against
9 loss as to any officer or employee who has access to
10 securities or funds of the company, either directly or
11 through authority to draw upon such funds or to di-
12 rect generally the disposition of such securities (un-
13 less the officer or employee has such access solely
14 through his position as an officer or employee of a
15 bank), in such form and amount as the Commission
16 may prescribe by rule, regulation, or order for the
17 protection of investors.

18 “(2) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) MANAGEMENT COMPANY.—The term
21 ‘management company’ has the meaning given
22 such term under section 4 of the Investment
23 Company Act of 1940.

24 “(B) OFFICER OR EMPLOYEE.—The term
25 ‘officer or employee’ means—

1 “(i) any officer or employee of the
2 management company; and

3 “(ii) any officer or employee of any
4 investment adviser to the management
5 company, or of any affiliated company of
6 any such investment adviser, as the Com-
7 mission may prescribe by rule, regulation,
8 or order for the protection of investors.

9 “(C) OTHER DEFINITIONS.—The terms
10 ‘affiliated company’ and ‘investment adviser’
11 shall have the meaning given such terms under
12 section 2 of the Investment Company Act of
13 1940.”.

14 **SEC. 7218. ENHANCED SEC AUTHORITY TO CONDUCT SUR-**
15 **VEILLANCE AND RISK ASSESSMENT.**

16 (a) SECURITIES EXCHANGE ACT OF 1934 AMEND-
17 MENTS.—Section 17(b) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78q(b)) is amended by adding at the end
19 the following new paragraph:

20 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
21 All persons described in subsection (a) of this sec-
22 tion are subject at any time, or from time to time,
23 to such reasonable periodic, special, or other infor-
24 mation and document requests by representatives of
25 the Commission as the Commission by rule or order

1 deems necessary or appropriate to conduct surveil-
2 lance or risk assessments of the securities markets,
3 persons registered with the Commission under this
4 title, or otherwise in furtherance of the purposes of
5 this title.”.

6 (b) INVESTMENT COMPANY ACT OF 1940 AMEND-
7 MENTS.—Section 31(b) of the Investment Company Act
8 of 1940 (15 U.S.C. 80a–30(b)), as amended by section
9 7106(a)(2), is further amended by adding at the end the
10 following new paragraph:

11 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
12 All persons described in paragraph (1) are subject at
13 any time, or from time to time, to such reasonable
14 periodic, special, or other information and document
15 requests by representatives of the Commission as the
16 Commission by rule or order deems necessary or ap-
17 propriate to conduct surveillance or risk assessments
18 of the securities markets, persons registered with the
19 Commission under this title, or otherwise in further-
20 ance of the purposes of this title.”.

21 (c) INVESTMENT ADVISERS ACT OF 1940 AMEND-
22 MENTS.—Section 204 of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–4), as amended by section 7106(b),
24 is further amended by adding at the end the following new
25 subsection:

1 “(e) SURVEILLANCE AND RISK ASSESSMENT.—All
2 persons described in subsection (a) are subject at any
3 time, or from time to time, to such reasonable periodic,
4 special, or other information and document requests by
5 representatives of the Commission as the Commission by
6 rule or order deems necessary or appropriate to conduct
7 surveillance or risk assessments of the securities markets,
8 persons registered with the Commission under this title,
9 or otherwise in furtherance of the purposes of this title.”.

10 **SEC. 7219. INVESTMENT COMPANY EXAMINATIONS.**

11 Section 31(b)(1) of the Investment Company Act of
12 1940 (15 U.S.C. 80a–30) is amended to read as follows:

13 “(1) IN GENERAL.—All records of each reg-
14 istered investment company, and each underwriter,
15 broker, dealer, or investment adviser that is a major-
16 ity-owned subsidiary of such a company, shall be
17 subject at any time, or from time to time, to such
18 reasonable periodic, special, or other examinations
19 by representatives of the Commission as the Com-
20 mission deems necessary or appropriate in the public
21 interest or for the protection of investors.”.

22 **SEC. 7220. CONTROL PERSON LIABILITY UNDER THE SECU-**
23 **RITIES EXCHANGE ACT.**

24 Section 20(a) of the Securities Exchange Act of 1934
25 (15 U.S.C. 78t(a)) is amended by inserting after “con-

1 trolled person is liable,” the following: “including to the
2 Commission in any action brought under paragraph (1)
3 or (3) of section 21(d),”.

4 **SEC. 7221. ENHANCED APPLICATION OF ANTI-FRAUD PRO-**
5 **VISIONS.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a
7 et seq.) is amended—

8 (1) in section 9—

9 (A) by striking “registered on a national
10 securities exchange” each place it appears and
11 inserting “other than a government security”;

12 (B) in subsection (b), by striking “by use
13 of any facility of a national securities ex-
14 change,”; and

15 (C) in subsection (c), by inserting after
16 “unlawful for any” the following: “broker, deal-
17 er, or”;

18 (2) in section 10(a)(1), by striking “registered
19 on a national securities exchange” and inserting
20 “other than a government security”; and

21 (3) in section 15(c)(1)(A), by striking “other-
22 wise than on a national securities exchange of which
23 it is a member”.

1 **SEC. 7222. SEC AUTHORITY TO ISSUE RULES ON PROXY AC-**
2 **CESS.**

3 Section 14(a) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n(a)) is amended—

5 (1) by inserting “(1)” after “(a)”; and

6 (2) by adding at the end the following:

7 “(2) The authority of the Commission to prescribe
8 rules and regulations under paragraph (1) includes rules
9 and regulations that require the inclusion and set proce-
10 dures relating to the inclusion, in a solicitation of a proxy
11 or consent or authorization by or on behalf of an issuer,
12 of a nominee or nominees submitted by shareholders to
13 serve on the issuer’s board of directors.”.

14 **PART 3—COMMISSION FUNDING AND**
15 **ORGANIZATION**

16 **SEC. 7301. AUTHORIZATION OF APPROPRIATIONS.**

17 Section 35 of the Securities Exchange Act of 1934
18 (15 U.S.C. 78kk) is amended to read as follows:

19 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

20 “In addition to any other funds authorized to be ap-
21 propriated to the Commission, there are authorized to be
22 appropriated to carry out the functions, powers, and du-
23 ties of the Commission—

24 “(1) for fiscal year 2010, \$1,115,000,000;

25 “(2) for fiscal year 2011, \$1,300,000,000;

26 “(3) for fiscal year 2012, \$1,500,000,000;

1 “(4) for fiscal year 2013, \$1,750,000,000;
2 “(5) for fiscal year 2014, \$2,000,000,000; and
3 “(6) for fiscal year 2015, \$2,250,000,000.”.

4 **SEC. 7302. INVESTMENT ADVISER REGULATION FUNDING.**

5 Section 203 of the Investment Advisers Act of 1940
6 (15 U.S.C. 80b–3) (as amended by sections 5006 and
7 5007) is further amended by adding at the end the fol-
8 lowing new subsection:

9 “(o) ANNUAL ASSESSMENT.—

10 “(1) IN GENERAL.—The Commission shall, in
11 accordance with this subsection, promulgate rules
12 pursuant to which it may collect from investment
13 advisers required to register with the Commission
14 under this title, fees designed to help recover the
15 cost of inspections and examinations of registered
16 investment advisers conducted by the Commission
17 pursuant to this title.

18 “(2) FEE PAYMENT REQUIRED.—An investment
19 adviser shall, at the time of registration with the
20 Commission, and each fiscal year thereafter during
21 which such adviser is so registered, pay to the Com-
22 mission a fair and reasonable fee determined by the
23 Commission. In determining such fee, the Commis-
24 sion shall consider objective factors such as—

25 “(A) the investment adviser’s size;

1 “(B) the number of clients of the invest-
2 ment adviser;

3 “(C) the types of clients of the investment
4 adviser; and

5 “(D) such other relevant factors as the
6 Commission determines to be appropriate.

7 “(3) AMOUNT AND USE OF FEES.—

8 “(A) MINIMUM AGGREGATE AMOUNT.—

9 The aggregate amount of fees determined by
10 the Commission under this subsection for any
11 fiscal year shall be greater than the amount the
12 Commission spent on inspections and examina-
13 tions of registered investment advisers during
14 the 2009 fiscal year.

15 “(B) EXCESS FEES.—The Commission
16 may retain any excess fees collected under this
17 subsection during a fiscal year for application
18 towards the costs of inspections and examina-
19 tions of investment advisers in future fiscal
20 years.

21 “(4) REVIEW AND ADJUSTMENT OF FEES.—

22 The Commission may review fee rates established
23 pursuant to this section before the end of any fiscal
24 year and make any appropriate adjustments prior to
25 collecting any such fee in the following fiscal year.

1 “(5) PENALTY FEE.—The Commission shall
2 prescribe by rule or regulation an additional fee to
3 be assessed as a penalty for late payment of fees re-
4 quired by this subsection.

5 “(6) JUDICIAL REVIEW.—Increases or decreases
6 in fees made pursuant to this section shall not be
7 subject to judicial review.”.

8 **SEC. 7303. AMENDMENTS TO SECTION 31 OF THE SECURI-**
9 **TIES EXCHANGE ACT OF 1934.**

10 Section 31 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78ee) is amended—

12 (1) in subsection (e)(2), by striking “September
13 30” and inserting “September 25”;

14 (2) in subsection (g), by striking “April 30”
15 and inserting “August 31”; and

16 (3) in subsection (j)(2)—

17 (A) by striking “5 months” and inserting
18 “4 months”; and

19 (B) by striking “(including fees collected
20 during such 5-month period and assessments
21 collected under subsection (d))” and inserting
22 “(including fees estimated to be collected under
23 subsections (b) and (c) prior to the effective
24 date of the uniform adjusted rate and assess-

1 ments estimated to be collected under sub-
2 section (d))”.

3 **SEC. 7304. COMMISSION ORGANIZATIONAL STUDY AND RE-**
4 **FORM.**

5 (a) STUDY REQUIRED.—

6 (1) IN GENERAL.—Not later than the end of
7 the 90-day period beginning on the date of the en-
8 actment of this subtitle, the Securities and Ex-
9 change Commission (hereinafter in this section re-
10 ferred to as the “SEC”) shall hire an independent
11 consultant of high caliber and with expertise in orga-
12 nizational restructuring and the operations of capital
13 markets to examine the internal operations, struc-
14 ture, funding, and the need for comprehensive re-
15 form of the SEC, as well as the SEC’s relationship
16 with and the reliance on self-regulatory organiza-
17 tions and other entities relevant to the regulation of
18 securities and the protection of securities investors
19 that are under the SEC’s oversight.

20 (2) SPECIFIC AREAS FOR STUDY.—The study
21 required under paragraph (1) shall, at a minimum,
22 include the study of—

23 (A) the possible elimination of unnecessary
24 or redundant units at the SEC;

1 (B) improving communications between
2 SEC offices and divisions;

3 (C) the need to put in place a clear chain-
4 of-command structure, particularly for enforce-
5 ment examinations and compliance inspections;

6 (D) the effect of high-frequency trading
7 and other technological advances on the market
8 and what the SEC requires to monitor the ef-
9 fect of such trading and advances on the mar-
10 ket;

11 (E) the SEC's hiring authorities, work-
12 place policies, and personal practices, includ-
13 ing—

14 (i) whether there is a need to further
15 streamline hiring authorities for those who
16 are not lawyers, accountants, compliance
17 examiners, or economists;

18 (ii) whether there is a need for further
19 pay reforms;

20 (iii) the diversity of skill sets of SEC
21 employees and whether the present skill set
22 diversity efficiently and effectively fosters
23 the SEC's mission of investor protection;
24 and

1 (iv) the application of civil service
2 laws by the SEC;

3 (F) whether the SEC's oversight and reli-
4 ance on self-regulatory organizations promotes
5 efficient and effective governance for the securi-
6 ties markets; and

7 (G) whether adjusting the SEC's reliance
8 on self-regulatory organizations is necessary to
9 promote more efficient and effective governance
10 for the securities markets.

11 (b) CONSULTANT REPORT.—Not later than the end
12 of the 150-day period after being retained, the inde-
13 pendent consultant hired pursuant to subsection (a)(1)
14 shall issue a report to the SEC and the Congress con-
15 taining—

16 (1) a detailed description of any findings and
17 conclusions made while carrying out the study re-
18 quired under subsection (a)(1); and

19 (2) recommendations for legislative, regulatory,
20 or administrative action that the consultant deter-
21 mines appropriate to enable the SEC and other enti-
22 ties on which it reports to perform their statutorily
23 or otherwise mandated missions.

24 (c) SEC REPORT.—Not later than the end of the 6-
25 month period beginning on the date the consultant issues

1 the report under subsection (b), and every 6-months there-
2 after during the 2-year period following the date on which
3 the consultant issues such report, the SEC shall issue a
4 report to the Committee on Financial Services of the
5 House of Representatives and the Committee on Banking,
6 Housing, and Urban Affairs of the Senate describing the
7 SEC's implementation of the regulatory and administra-
8 tive recommendations contained in the consultant's report.

9 **SEC. 7305. CAPITAL MARKETS SAFETY BOARD.**

10 There is established within the Securities and Ex-
11 change Commission an office to be known as the Capital
12 Markets Safety Board whose purpose shall be to conduct
13 investigations, at the direction of the Commission, of
14 failed institutions registered with the Commission, to de-
15 termine what caused such institutions to fail. Upon the
16 conclusion of an investigation, the Board shall make avail-
17 able on the Commission's website a report of its findings,
18 including recommendations regarding how others can
19 avoid similar mistakes. No information that may com-
20 promise an ongoing Federal investigation shall be made
21 available in any such report.

22 **SEC. 7306. REPORT ON IMPLEMENTATION OF "POST-**
23 **MADOFF REFORMS".**

24 (a) IN GENERAL.—Not later than 6 months after the
25 date of the enactment of this subtitle, the Securities and

1 Exchange Commission shall provide to the Committee on
2 Financial Services of the House of Representatives and
3 the Committee on Banking, Housing, and Urban Affairs
4 of the Senate a report describing the implementation of
5 reforms outlined by the Commission in the wake of the
6 discovery of fraud by Bernie Madoff.

7 (b) CONTENTS OF REPORT.—The report required by
8 subsection (a) shall include an analysis of—

9 (1) how many of the post-Madoff reforms have
10 been implemented and to what extent; and

11 (2) whether there is overlap between any of the
12 Commission's reform proposals and those rec-
13 ommended by the Inspector General of the Commis-
14 sion.

15 (c) PUBLICATION OF REPORT.—The Commission and
16 the Committees referred to in subsection (a) shall publish
17 the report required by such subsection on their Web sites.

18 **SEC. 7307. JOINT ADVISORY COMMITTEE.**

19 The Securities and Exchange Commission and the
20 Commodities Futures Trading Commission may jointly
21 form and operate a joint advisory committee composed of
22 members of each Commission and industry experts and
23 participants. The purposes of such an advisory committee
24 include—

1 (1) considering and developing solutions to
2 emerging and ongoing issues of common interest in
3 the futures and securities markets;

4 (2) identifying emerging regulatory risks and
5 assess and quantify their implications for investors
6 and other market participants, and provide rec-
7 ommendations for solutions;

8 (3) serving as a vehicle for discussion and com-
9 munication on regulatory issues of mutual concerns
10 affecting each Commission, the regulated markets,
11 and the industry generally; and

12 (4) reporting regularly to each Commission and
13 to Congress on its activities.

14 **PART 4—ADDITIONAL COMMISSION REFORMS**

15 **SEC. 7401. REGULATION OF SECURITIES LENDING.**

16 Section 10 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78j) is amended by adding at the end the fol-
18 lowing new subsection:

19 “(c)(1) To effect, accept, or facilitate a transaction
20 involving the loan or borrowing of securities in contraven-
21 tion of such rules and regulations as the Commission may
22 prescribe as necessary or appropriate in the public interest
23 or for the protection of investors.

24 “(2) Nothing in paragraph (1) shall be construed to
25 limit the authority of an appropriate Federal banking

1 agency (as defined in section 3 of the Federal Deposit In-
2 surance Act (12 U.S.C. 1813(q))), the National Credit
3 Union Administration, or any other Federal department
4 or agency identified under law as having a systemic risk
5 responsibility from prescribing rules or regulations to im-
6 pose restrictions on transactions involving the loan or bor-
7 rowing of securities in order to protect the safety and
8 soundness of a financial institution or to protect the finan-
9 cial system from systemic risk.”.

10 **SEC. 7402. LOST AND STOLEN SECURITIES.**

11 Section 17(f)(1) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78q(f)(1)) is amended—

13 (1) in subparagraph (A), by striking “missing,
14 lost, counterfeit, or stolen securities” and inserting
15 “securities that are missing, lost, counterfeit, stolen,
16 cancelled, or any other category of securities as the
17 Commission, by rule, may prescribe”; and

18 (2) in subparagraph (B), by striking “or sto-
19 len” and inserting “stolen, cancelled, or reported in
20 such other manner as the Commission, by rule, may
21 prescribe”.

22 **SEC. 7403. FINGERPRINTING.**

23 Section 17(f)(2) of the Securities Exchange Act of
24 1934 (15 U.S.C. 78q(f)(2)) is amended—

1 (1) by striking “and registered clearing agen-
2 cy,” and inserting “registered clearing agency, reg-
3 istered securities information processor, national se-
4 curities exchange, and national securities associa-
5 tion”; and

6 (2) by striking “or clearing agency,” and insert-
7 ing “clearing agency, securities information proc-
8 essor, national securities exchange, or national secu-
9 rities association,”.

10 **SEC. 7404. EQUAL TREATMENT OF SELF-REGULATORY OR-**
11 **GANIZATION RULES.**

12 Section 29(a) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
14 required thereby” and inserting “a self-regulatory organi-
15 zation,”.

16 **SEC. 7405. CLARIFICATION THAT SECTION 205 OF THE IN-**
17 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
18 **APPLY TO STATE-REGISTERED ADVISERS.**

19 Section 205(a) of the Investment Advisers Act of
20 1940 (15 U.S.C. 80b–5(a)) is amended—

21 (1) by striking “, unless exempt from registra-
22 tion pursuant to section 203(b),” and inserting
23 “registered or required to be registered with the
24 Commission”;

1 (2) by striking “make use of the mails or any
2 means or instrumentality of interstate commerce, di-
3 rectly or indirectly, to”; and

4 (3) by striking “to” after “in any way”.

5 **SEC. 7406. CONFORMING AMENDMENTS FOR THE REPEAL**
6 **OF THE PUBLIC UTILITY HOLDING COMPANY**
7 **ACT OF 1935.**

8 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
9 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
10 amended—

11 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
12 by striking “the Public Utility Holding Company
13 Act of 1935 (15 U.S.C. 79a et seq.),”; and

14 (2) in section 12(k) (15 U.S.C. 78l(k)), by
15 amending paragraph (7) to read as follows:

16 “(7) DEFINITION.—For purposes of this sub-
17 section, the term ‘emergency’ means—

18 “(A) a major market disturbance charac-
19 terized by or constituting—

20 “(i) sudden and excessive fluctuations
21 of securities prices generally, or a substan-
22 tial threat thereof, that threaten fair and
23 orderly markets; or

24 “(ii) a substantial disruption of the
25 safe or efficient operation of the national

1 system for clearance and settlement of
2 transactions in securities, or a substantial
3 threat thereof; or

4 “(B) a major disturbance that substan-
5 tially disrupts, or threatens to substantially dis-
6 rupt—

7 “(i) the functioning of securities mar-
8 kets, investment companies, or any other
9 significant portion or segment of the secu-
10 rities markets; or

11 “(ii) the transmission or processing of
12 securities transactions.”.

13 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
14 by striking “section 18(c) of the Public Utility Hold-
15 ing Company Act of 1935,”.

16 (b) TRUST INDENTURE ACT OF 1939.—The Trust
17 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
18 amended—

19 (1) in section 303 (15 U.S.C. 77ccc), by
20 amending paragraph (17) to read as follows:

21 “(17) The terms ‘Securities Act of 1933’ and
22 ‘Securities Exchange Act of 1934’ shall be deemed
23 to refer, respectively, to such Acts, as amended,
24 whether amended prior to or after the enactment of
25 this title.”;

1 (2) in section 308 (15 U.S.C. 77hhh), by strik-
2 ing “Securities Act of 1933, the Securities Exchange
3 Act of 1934, or the Public Utility Holding Company
4 Act of 1935” each place it appears and inserting
5 “Securities Act of 1933 or the Securities Exchange
6 Act of 1934”;

7 (3) in section 310 (15 U.S.C. 77jjj), by striking
8 subsection (c);

9 (4) in section 311 (15 U.S.C. 77kkk) by strik-
10 ing subsection (c);

11 (5) in section 323(b) (15 U.S.C. 77www(b)), by
12 striking “Securities Act of 1933, or the Securities
13 Exchange Act of 1934, or the Public Utility Holding
14 Company Act of 1935” and inserting “Securities Act
15 of 1933 or the Securities Exchange Act of 1934”;
16 and

17 (6) in section 326 (15 U.S.C. 77zzz), by strik-
18 ing “Securities Act of 1933, or the Securities Ex-
19 change Act of 1934, or the Public Utility Holding
20 Company Act of 1935,” and inserting “Securities
21 Act of 1933 or the Securities Exchange Act of
22 1934”.

23 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
24 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
25 is amended—

1 (1) in section 2(a)(44) (15 U.S.C. 80a–
2 2(a)(44)), by striking “‘Public Utility Holding Com-
3 pany Act of 1935’,”;

4 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
5 amending paragraph (8) to read as follows:

6 “(8) [Repealed]”;

7 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
8 striking “the Public Utility Holding Company Act of
9 1935,”; and

10 (4) in section 50 (15 U.S.C. 80a–49), by strik-
11 ing “the Public Utility Holding Company Act of
12 1935,”.

13 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
14 202(a)(21) of the Investment Advisers Act of 1940 (15
15 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
16 Utility Holding Company Act of 1935’,”.

17 **SEC. 7407. PROMOTING TRANSPARENCY IN FINANCIAL RE-**
18 **PORTING.**

19 (a) FINDINGS.—Congress finds the following:

20 (1) Transparent and clear financial reporting is
21 integral to the continued growth and strength of our
22 capital markets and the confidence of investors.

23 (2) The increasing detail and volume of ac-
24 counting, auditing, and reporting guidance pose a
25 major challenge.

1 (3) The complexity of accounting and auditing
2 standards in the United States has added to the
3 costs and effort involved in financial reporting.

4 (b) TESTIMONY REQUIRED ON REDUCING COM-
5 PLEXITY IN FINANCIAL REPORTING.—The Securities and
6 Exchange Commission, the Public Company Accounting
7 Oversight Board, and the standard setting body des-
8 ignated pursuant to section 19(b) of the Securities Act
9 of 1933 shall annually provide oral testimony by their re-
10 spective Chairpersons or a designee of the Chairperson,
11 beginning in 2010, and for 5 years thereafter, to the Com-
12 mittee on Financial Services of the House of Representa-
13 tives on their efforts to reduce the complexity in financial
14 reporting to provide more accurate and clear financial in-
15 formation to investors, including—

16 (1) reassessing complex and outdated account-
17 ing standards;

18 (2) improving the understandability, consist-
19 ency, and overall usability of the existing accounting
20 and auditing literature;

21 (3) developing principles-based accounting
22 standards;

23 (4) encouraging the use and acceptance of
24 interactive data; and

25 (5) promoting disclosures in “plain English”.

1 **SEC. 7408. UNLAWFUL MARGIN LENDING.**

2 Section 7(c)(1)(A) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
4 and” and inserting “; or”.

5 **SEC. 7409. PROTECTING CONFIDENTIALITY OF MATERIALS**
6 **SUBMITTED TO THE COMMISSION.**

7 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
8 17(i) of the Securities Exchange Act of 1934 (as amended
9 by section 1314(2)) is amended to read as follows:

10 “(i) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
11 MATION.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Commission shall not be com-
14 pelled to disclose any information, documents,
15 records, or reports that relate to an examination,
16 surveillance, or risk assessment of a person subject
17 to or described in this section, or the financial or
18 operational condition of such persons, or any infor-
19 mation supplied to the Commission by any domestic
20 or foreign regulatory agency or self-regulatory orga-
21 nization that relates to the financial or operational
22 condition of such persons, of any associated person
23 of such persons, or any affiliate of an investment
24 bank holding company.

25 “(2) CERTAIN EXCEPTIONS.—Nothing in this
26 subsection shall authorize the Commission to with-

1 hold information from the Congress, prevent the
2 Commission from complying with a request for infor-
3 mation from any other Federal department or agen-
4 cy, the Public Company Accounting Oversight
5 Board, or any self-regulatory organization request-
6 ing the information for purposes within the scope of
7 its jurisdiction, or prevent the Commission from
8 complying with an order of a court of the United
9 States in an action brought by the United States or
10 the Commission against a person subject to or de-
11 scribed in this section to produce information, docu-
12 ments, records, or reports relating directly to the ex-
13 amination, surveillance, or risk assessment of that
14 person or the financial or operational condition of
15 that person or an associated or affiliated person of
16 that person.

17 “(3) TREATMENT UNDER SECTION 552 OF
18 TITLE 5, UNITED STATES CODE.—For purposes of
19 section 552 of title 5, United States Code, this sub-
20 section shall be considered a statute described in
21 subsection (b)(3)(B) of that section.

22 “(4) CERTAIN INFORMATION TO BE CONFIDEN-
23 TIAL.—In prescribing regulations to carry out the
24 requirements of this subsection, the Commission
25 shall designate information described in or obtained

1 pursuant to subparagraphs (A), (B), and (C) of sub-
2 section (i)(3) as confidential information for pur-
3 poses of section 24(b)(2) of this title.”.

4 (b) INVESTMENT COMPANY ACT OF 1940.—Section
5 31(b) of the Investment Company Act of 1940 (15 U.S.C.
6 80a–30(b)), as amended by sections 7106(a)(2) and
7 7218(b)(4), is further amended by adding at the end the
8 following new paragraph:

9 “(6) CONFIDENTIALITY.—

10 “(A) IN GENERAL.—Notwithstanding any
11 other provision of law, the Commission shall not
12 be compelled to disclose any information, docu-
13 ments, records, or reports that relate to an ex-
14 amination, surveillance, or risk assessment of a
15 person subject to or described in this section.

16 “(B) CERTAIN EXCEPTIONS.—Nothing in
17 this subsection shall authorize the Commission
18 to withhold information from the Congress, pre-
19 vent the Commission from complying with a re-
20 quest for information from any other Federal
21 department or agency, or the Public Company
22 Accounting Oversight Board requesting the in-
23 formation for purposes within the scope of its
24 jurisdiction, or prevent the Commission from
25 complying with an order of a court of the

1 United States in an action brought by the
2 United States or the Commission against a per-
3 son subject to or described in this section to
4 produce information, documents, records, or re-
5 ports relating directly to the examination of
6 that person or the financial or operational con-
7 dition of that person or an associated or affili-
8 ated person of that person.

9 “(C) TREATMENT UNDER SECTION 552 OF
10 TITLE 5, UNITED STATES CODE.—For purposes
11 of section 552 of title 5, United States Code,
12 this subsection shall be considered a statute de-
13 scribed in subsection (b)(3)(B) of that sec-
14 tion.”.

15 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
16 204 of the Investment Advisers Act of 1940 (15 U.S.C.
17 80b–4), as amended by sections 7106(b) and 7218(c), is
18 further amended by adding at the end the following new
19 subsection:

20 “(f) CONFIDENTIALITY.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of law, the Commission shall not be com-
23 pelled to disclose any information, documents,
24 records, or reports that relate to an examination of
25 a person subject to or described in this section.

1 “(2) CERTAIN EXCEPTIONS.—Nothing in this
2 subsection shall authorize the Commission to with-
3 hold information from Congress, prevent the Com-
4 mission from complying with a request for informa-
5 tion from any other Federal department or agency,
6 the Public Company Accounting Oversight Board, or
7 a self-regulatory organization requesting the infor-
8 mation for purposes within the scope of its jurisdic-
9 tion, or prevent the Commission from complying
10 with an order of a court of the United States in an
11 action brought by the United States or the Commis-
12 sion against a person subject to or described in this
13 section to produce information, documents, records,
14 or reports relating directly to the examination of
15 that person or the financial or operational condition
16 of that person or an associated or affiliated person
17 of that person.

18 “(3) TREATMENT UNDER SECTION 552 OF
19 TITLE 5, UNITED STATES CODE.—For purposes of
20 section 552 of title 5, United States Code, this sub-
21 section shall be considered a statute described in
22 subsection (b)(3)(B) of that section.”.

23 **SEC. 7410. TECHNICAL CORRECTIONS.**

24 (a) SECURITIES ACT OF 1933.—The Securities Act
25 of 1933 (15 U.S.C. 77a et seq.) is amended—

1 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
2 striking “individual;” and inserting “individual;”;

3 (2) in the matter following paragraph (5) of
4 section 11(a), by striking “earning statement” and
5 inserting “earnings statement”;

6 (3) in section 18(b)(1)(C) (15 U.S.C.
7 77r(b)(1)(C)), by striking “is a security” and insert-
8 ing “a security”;

9 (4) in section 18(c)(2)(B)(i) (15 U.S.C.
10 77r(c)(2)(B)(i)), by striking “State, or” and insert-
11 ing “State or”;

12 (5) in section 19(d)(6)(A) (15 U.S.C.
13 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
14 and inserting “in paragraph (1) or (3)”;

15 (6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-
16 2(c)(1)(B)(ii)), by striking “business entity;” and in-
17 serting “business entity.”.

18 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
19 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
20 amended—

21 (1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by
22 striking “affected” and inserting “effected”;

23 (2) in section 3(a)(55)(A) (15 U.S.C.
24 78c(a)(55)(A)), by striking “section 3(a)(12) of the

1 Securities Exchange Act of 1934” and inserting
2 “section 3(a)(12) of this Act”;

3 (3) in section 3(g) (15 U.S.C. 78c(g)), by strik-
4 ing “company, account person, or entity” and insert-
5 ing “company, account, person, or entity”;

6 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j-
7 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
8 “non-audit”;

9 (5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
10 by striking “earning statement” and inserting
11 “earnings statement”;

12 (6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

13 (A) by striking the sentence beginning
14 “The order granting” and ending “from such
15 membership.” in subparagraph (B); and

16 (B) by inserting such sentence in the mat-
17 ter following such subparagraph after “are sat-
18 isfied.”;

19 (7) in section 15C(a)(2) (15 U.S.C. 78o-
20 5(a)(2))—

21 (A) by redesignating clauses (i) and (ii) as
22 subparagraphs (A) and (B), respectively;

23 (B) by striking the sentence beginning
24 “The order granting” and ending “from such

1 membership.” in such subparagraph (B), as re-
 2 designated; and

3 (C) by inserting such sentence in the mat-
 4 ter following such redesignated subparagraph
 5 after “are satisfied.”;

6 (8) in section 17(b)(1)(B) (15 U.S.C.
 7 78q(b)(1)(B)), by striking “15A(k) gives” and in-
 8 serting “15A(k), give”; and

9 (9) in section 21C(c)(2) (15 U.S.C. 78u-
 10 3(c)(2)), by striking “paragraph (1) subsection” and
 11 inserting “Paragraph (1)”.

12 (c) TRUST INDENTURE ACT OF 1939.—The Trust
 13 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
 14 amended—

15 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
 16 striking “section 2 of such Act” and inserting “sec-
 17 tion 2(a) of such Act”;

18 (2) in section 313(a)(4) (15 U.S.C.
 19 77mmm(a)(4)) by striking “subsection (b) of section
 20 311” and inserting “section 311(b)”;

21 (3) in section 317(a)(1) (15 U.S.C.
 22 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

23 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
 24 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
 25 is amended—

1 (1) in section 2(a)(19)(B) (15 U.S.C. 80a–
2 2(a)(19)(B)) by striking “clause (vi)” both places it
3 appears in the last two sentences and inserting
4 “clause (vii)”;

5 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
6 9(b)(4)(B)), by inserting “or” after the semicolon at
7 the end;

8 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
9 12(d)(1)(J)), by striking “any provision of this sub-
10 section” and inserting “any provision of this para-
11 graph”;

12 (4) in section 13(a)(3) (15 U.S.C. 80a–
13 13(a)(3)), by inserting “or” after the semicolon at
14 the end;

15 (5) in section 17(f)(4) (15 U.S.C. 80a–
16 17(f)(4)), by striking “No such member” and insert-
17 ing “No member of a national securities exchange”;

18 (6) in section 17(f)(6) (15 U.S.C. 80a–
19 17(f)(6)), by striking “company may serve” and in-
20 serting “company, may serve”; and

21 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
22 60(a)(3)(B)(iii))—

23 (A) by striking “paragraph (1) of section
24 205” and inserting “section 205(a)(1)”; and

1 (B) by striking “clause (A) or (B) of that
 2 section” and inserting “section 205(b)(1) or
 3 (2)”.

4 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
 5 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
 6 is amended—

7 (1) in each of the following sections, by striking
 8 “principal business office” or “principal place of
 9 business” (whichever and wherever it appears) and
 10 inserting “principal office and place of business”:
 11 sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b),
 12 and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–
 13 3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–
 14 18a(c)); and

15 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
 16 inserting “or” after the semicolon at the end.

17 **SEC. 7411. MUNICIPAL SECURITIES.**

18 Section 15B(b) of the Securities Exchange Act of
 19 1934 (15 U.S.C. 78o–4(b)) is amended—

20 (1) by amending paragraph (1) to read as fol-
 21 lows:

22 “(1) COMPOSITION OF THE MUNICIPAL SECURI-
 23 TIES RULEMAKING BOARD.—Not later than October
 24 1, 2010, the Municipal Securities Rulemaking Board
 25 (hereinafter in this section referred to as the

1 ‘Board’), shall be composed of members which shall
2 perform the duties set forth in this section and shall
3 consist of—

4 “(A) a majority of independent public rep-
5 resentatives, at least one of whom shall be rep-
6 resentative of investors in municipal securities
7 and at least one of whom shall be representative
8 of issuers of municipal securities (which mem-
9 bers are hereinafter referred to as ‘public rep-
10 resentatives’);

11 “(B) at least one individual who is rep-
12 resentative of municipal securities brokers and
13 municipal securities dealers which are not
14 banks or subsidiaries or departments or divi-
15 sions of banks (which members are hereinafter
16 referred to as ‘broker-dealer representatives’);
17 and

18 “(C) at least one individual who is rep-
19 resentative of municipal securities dealers which
20 are banks or subsidiaries or departments or di-
21 visions of banks (which members are herein-
22 after referred to as ‘bank representatives’).”;
23 and

24 (2) by amending paragraph (2)(B) to read as
25 follows:

1 “(B) Establish fair procedures for the nomina-
2 tion and election of members of the Board and as-
3 sure fair representation in such nominations and
4 elections of municipal securities brokers and munic-
5 ipal securities dealers. Such rules—

6 “(i) shall establish requirements regarding
7 the independence of public representatives;

8 “(ii) shall provide that the number of pub-
9 lic representatives of the Board shall at all
10 times exceed the total number of broker-dealer
11 representatives and bank representatives;

12 “(iii) shall establish minimum knowledge,
13 experience, and other appropriate qualifications
14 for individuals to serve as public representa-
15 tives, which may include, among other things,
16 prior work experience in the securities, munic-
17 ipal finance, or municipal securities industries;

18 “(iv) shall specify the term members shall
19 serve; and

20 “(v) may increase or decrease the number
21 of members which shall constitute the whole
22 Board, but in no case may such number be an
23 even number.”.

1 **SEC. 7412. INTERESTED PERSON DEFINITION.**

2 Section 2(a)(19)(A) of the Investment Company Act
3 of 1940 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

4 (1) by striking clauses (v) and (vi);

5 (2) by inserting after clause (iv) the following
6 new clause:

7 “(v) any natural person who is a
8 member of a class of persons who the
9 Commission, by rule or regulation, deter-
10 mines are unlikely to exercise an appro-
11 priate degree of independence as a result
12 of—

13 “(I) a material business or pro-
14 fessional relationship with such com-
15 pany or any affiliated person of such
16 company; or

17 “(II) a close familial relationship
18 with any natural person who is an af-
19 filiated person of such company;”;

20 (3) by redesignating clause (vii) as clause (vi);

21 and

22 (4) in clause (vi), as redesignated, by striking
23 “two completed fiscal years” and inserting “five
24 completed fiscal years”.

1 **SEC. 7413. RULEMAKING AUTHORITY TO PROTECT RE-**
2 **DEEMING INVESTORS.**

3 Section 22(e) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-22(e)) is amended by adding at the
5 end the following: “The Commission may, by rules and
6 regulations, limit the extent to which a registered open-
7 end investment company may own, hold, or invest in il-
8 liquid securities or other illiquid property.”.

9 **SEC. 7414. STUDY ON SEC REVOLVING DOOR.**

10 (a) GOVERNMENT ACCOUNTABILITY OFFICE
11 STUDY.—The Comptroller General of the United States
12 shall conduct a study that will—

13 (1) review the number of employees who leave
14 the Securities and Exchange Commission to work
15 for financial institutions regulated by such Commis-
16 sion;

17 (2) determine how many employees who leave
18 the Securities and Exchange Commission worked on
19 cases that involved financial institutions regulated by
20 such Commission;

21 (3) review the length of time employees work
22 for the Securities and Exchange Commission before
23 leaving to be employed by financial institutions regu-
24 lated by such Commission;

25 (4) review existing internal controls and make
26 recommendations on strengthening such controls to

1 ensure that employees of the Securities and Ex-
2 change Commission who are later employed by fi-
3 nancial institutions did not assist such institutions
4 in violating any rules or regulations of the Commis-
5 sion during the course of their employment with
6 such Commission;

7 (5) determine if greater post-employment re-
8 strictions are necessary to prevent employees of the
9 Securities and Exchange Commission from being
10 employed by financial institutions after employment
11 with such Commission;

12 (6) determine if the volume of employees of the
13 Securities and Exchange Commission who are later
14 employed by financial institutions has led to ineffi-
15 ciencies in enforcement;

16 (7) determine if employees of the Securities and
17 Exchange Commission who are later employed by fi-
18 nancial institutions assisted such institutions in cir-
19 cumventing Federal rules and regulations while em-
20 ployed by such Commission;

21 (8) review any information that may address
22 the volume of employees of the Securities and Ex-
23 change Commission who are later employed by fi-
24 nancial institutions, and make recommendations to
25 Congress; and

1 (9) review other additional issues as may be
2 raised during the course of the study conducted
3 under this subsection.

4 (b) REPORT.—Not later than 1 year after the date
5 of the enactment of this subtitle, the Comptroller General
6 of the United States shall submit to the Committee on
7 Financial Services of the House of Representatives and
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate a report on the results of the study required
10 by subsection (a).

11 **SEC. 7415. STUDY ON INTERNAL CONTROL EVALUATION**
12 **AND REPORTING COST BURDENS ON SMALL-**
13 **ER ISSUERS.**

14 (a) STUDY REQUIRED.—The Government Account-
15 ability Office shall conduct a study evaluating the costs
16 and benefits of complying with section 404(b) of the Sar-
17 banes-Oxley Act of 2002 (15 U.S.C. 7262(b)) on issuers
18 who are not accelerated or large accelerated filers as de-
19 fined by Commission Rule 12b–2. The study shall—

20 (1) include recommendations, administrative re-
21 forms, and legislative proposals on implementation
22 steps that could be taken to reduce compliance bur-
23 dens on these issuers;

1 (2) determine the efficacy of the Securities and
2 Exchange Commission's measures to limit the cost
3 of compliance on smaller issuers;

4 (3) determine how to reduce the burden of com-
5 plying with section 404(b) of the Sarbanes-Oxley Act
6 of 2002 for companies whose market capitalization
7 is less than \$250,000,000 for the relevant reporting
8 period while maintaining investor protections for
9 such companies; and

10 (4) determine whether various methods of re-
11 ducing the compliance burden or a complete exemp-
12 tion for such companies (whose market capitalization
13 is less than \$250,000,000 for the relevant reporting
14 period) from such compliance would encourage com-
15 panies to list on exchanges in the United States in
16 their initial public offerings.

17 (b) REPORTS REQUIRED.—Not later than 9 months
18 after the date of the enactment of this subtitle, the Gov-
19 ernment Accountability Office shall submit a report to
20 Congress containing the findings and conclusions of the
21 studies required under subsection (a), together with such
22 recommendations for regulatory, legislative, or administra-
23 tive action as may be appropriate.

24 (c) EFFECTIVE DATE CONTINGENT ON REPORTS.—
25 Requirements under section 404(b) of the Sarbanes-Oxley

1 Act of 2002 on issuers described under subsection (a) shall
2 not become effective until the results of the report are de-
3 livered, but in no case before June 1, 2011.

4 **SEC. 7416. ANALYSIS OF RULE REGARDING SMALLER RE-**
5 **PORTING COMPANIES.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Many small businesses in cutting-edge tech-
8 nology sectors require significant capital investment
9 to develop new technologies related to clean energy,
10 drug treatments for terminal diseases and food pro-
11 duction in hunger-stricken areas of the World.

12 (2) Many technology companies conducting re-
13 search do not meet the definition of “smaller report-
14 ing company” under the Securities and Exchange
15 Commission’s Rule 12b–2 due to unusually high
16 public floats despite low or zero revenue.

17 (3) The Final Report of the Advisory Com-
18 mittee on Smaller Public Companies to the Securi-
19 ties and Exchange Commission recommended that a
20 company with a market capitalization of less than
21 about \$787,000,000 be considered a smallcap com-
22 pany and that the Commission provide exemptions
23 from section 404(b) of the Sarbanes-Oxley Act to
24 companies with less than \$250,000,000 in annual
25 revenues.

1 (b) STUDY OF USING REVENUE AS CRITERIA TO DE-
2 FINE SMALLER REPORTING COMPANY.—The Securities
3 and Exchange Commission shall conduct a study of the
4 inclusion of revenue as a criteria used in defining smaller
5 reporting company as defined under the Commission’s
6 Rule 12b–2 to account for smaller public companies with
7 public floats less than \$700,000,000 and revenues less
8 than \$250,000,000. Not later than 180 days after the date
9 of enactment of this subtitle, the Commission shall provide
10 the Committee on Financial Services of the House of Rep-
11 resentatives and the Committee on Banking, Housing and
12 Urban Affairs of the Senate a report of the findings of
13 the study.

14 **SEC. 7417. FINANCIAL REPORTING FORUM.**

15 (a) ESTABLISHMENT.—There is hereby established a
16 Financial Reporting Forum (hereinafter referred to as the
17 “Forum”), which shall consist of—

18 (1) the Chairman of the Securities Exchange
19 Commission (hereinafter referred to as the “SEC”);

20 (2) the head of the Financial Accounting
21 Standards Board;

22 (3) the Chairman of the Public Company Ac-
23 counting Oversight Board;

24 (4) the head of each appropriate Federal bank-
25 ing agency, as such term is defined under section

1 3(q) of the Federal Deposit Insurance Act (12
2 U.S.C. 1813(q));

3 (5) the Administrator of the National Credit
4 Union Administration;

5 (6) the Secretary of the Treasury;

6 (7) a representative of a non-financial institu-
7 tion, appointed by the SEC;

8 (8) a representative of a financial institution,
9 appointed by the SEC;

10 (9) a representative of auditors, appointed by
11 the SEC; and

12 (10) a representative of investors, appointed by
13 the SEC.

14 (b) MEETINGS.—The Forum shall meet no less often
15 than quarterly.

16 (c) DUTIES.—The Forum shall meet to discuss im-
17 mediate and long-term issues critical to financial report-
18 ing.

19 (d) REPORTING.—The Forum shall issue an annual
20 report to the Congress detailing any determinations or
21 findings made by the Forum during the previous year, in-
22 cluding any legislative recommendations the Forum may
23 have related to financial reporting matters.

1 **SEC. 7418. INVESTMENT ADVISERS SUBJECT TO STATE AU-**
2 **THORITIES.**

3 Section 203A(a) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b–3a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 “(2) TREATMENT OF CERTAIN MID-SIZED IN-
10 VESTMENT ADVISERS.—Notwithstanding paragraph
11 (1), an investment adviser that is not exempt from
12 registration under section 203 and—

13 “(A) is regulated and examined, or re-
14 quired to be regulated and examined, in the
15 State where it maintains its principal office and
16 place of business; and

17 “(B) has assets under management be-
18 tween—

19 “(i) the amount specified under sub-
20 paragraph (A) of paragraph (1), as such
21 amount may have been adjusted by the
22 Commission pursuant to that subpara-
23 graph; and

24 “(ii) \$100,000,000, or such higher
25 amount as the Commission may, by rule,

1 deem appropriate in accordance with the
2 purposes of this title,
3 shall register with, and be subject to examina-
4 tion by, such State. The Commission shall pub-
5 lish a list of the States that regulate and exam-
6 ine, or require regulation and examination of,
7 investment advisers to which the requirements
8 of this paragraph apply. If no State in which an
9 investment adviser described in subparagraph
10 (B) is registered conducts such an examination,
11 the investment adviser must register with the
12 Commission. If, pursuant to this paragraph, an
13 investment adviser would be required to register
14 with 5 or more States, then the adviser may
15 maintain its registration with the Commis-
16 sion.”.

17 **SEC. 7419. CUSTODIAL REQUIREMENTS.**

18 (a) IN GENERAL.—Not later than 180 days after the
19 date of the enactment of this title, the Securities and Ex-
20 change Commission shall adopt a rule pursuant to its au-
21 thority under section 211(a) of the Investment Advisers
22 Act of 1940 making it unlawful under section 206(4) of
23 that Act for an investment adviser registered under such
24 Act to have custody of funds or securities of a client the
25 value of which exceeds \$10,000,000, unless—

1 (1) the funds and securities are maintained
2 with a qualified custodian either in a separate ac-
3 count for each client under the client's name, or in
4 accounts that contain only client funds and securi-
5 ties under the name of the investment adviser as
6 agent or trustee for the client; and

7 (2) the qualified custodian does not directly or
8 indirectly provide investment advice with respect to
9 such funds or securities.

10 (b) EXCEPTIONS.—The rule adopted under sub-
11 section (a) shall include such exceptions as the Commis-
12 sion determines in the public interest and consistent with
13 the protection of investors. Any exemption granted under
14 this subsection shall ensure that at least once per year,
15 a client described in subsection (a) shall receive a report
16 from an independent entity with a fiduciary responsibility
17 to the client to verify that the assets in the client's account
18 are in accord with those stated on the client's account
19 statement.

20 (c) NO LIMITS ON OTHER ACTIONS.—Nothing in this
21 section shall be construed to limit other actions the Securi-
22 ties and Exchange Commission may take under this Act
23 to require the protection of client assets.

1 **SEC. 7420. OMBUDSMAN.**

2 (a) APPOINTMENT.—Not later than 180 days after
3 the date of the enactment of this subtitle, the Chairman
4 of the Securities and Exchange Commission shall appoint
5 an Ombudsman who shall report directly to the Chairman.

6 (b) DUTIES.—The Ombudsman appointed under sub-
7 section (a) shall—

8 (1) act as a liaison between the Commission
9 and any affected person with respect to any problem
10 such person may have in dealing with the Commis-
11 sion resulting from the regulatory activities of the
12 Commission;

13 (2) review and make recommendations regard-
14 ing Commission policies and procedures to encour-
15 age persons to present questions to the Commission
16 regarding compliance with Federal securities laws;
17 and

18 (3) assure that safeguards exist to maintain
19 confidentiality of communications between such per-
20 sons and the Ombudsman.

21 (c) LIMITATION.—In carrying out the duties under
22 subsection (b), the Ombudsman shall utilize personnel of
23 the Commission to the extent practicable. Nothing in this
24 section shall be construed as replacing, altering, or dimin-
25 ishing the activities of any ombudsman or similar office
26 in any other agency.

1 (d) REPORT.—Each year, the Ombudsman shall sub-
2 mit a report to the Commission for inclusion in the annual
3 report that describes the activities and evaluates the effec-
4 tiveness of the Ombudsman during the preceding year. In
5 that report, the Ombudsman shall include solicited com-
6 ments and evaluations from registrants in regard to the
7 effectiveness of the Ombudsman.

8 **SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.**

9 Section 17A of the Securities Exchange Act of 1934
10 (15 U.S.C. 78q–1) is amended by adding at the end the
11 following new subsection:

12 “(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
13 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
14 RIGHTS.—

15 “(1) REVISION OF RULES REQUIRED.—The
16 Commission shall revise its regulations in section
17 240.17Ad–17 of title 17, Code of Federal Regula-
18 tions, as in effect on December 8, 1997, to extend
19 the application of such section to brokers and deal-
20 ers and to provide for the following:

21 “(A) A requirement that the paying agent
22 provide a single written notification to each
23 missing security holder that the missing secu-
24 rity holder has been sent a check that has not
25 yet been negotiated. The written notification

1 may be sent along with a check or other mailing
2 subsequently sent to the missing security holder
3 but must be provided no later than 7 months
4 after the sending of the not yet negotiated
5 check.

6 “(B) An exclusion for paying agents from
7 the notification requirements when the value of
8 the not yet negotiated check is less than \$25.

9 “(C) A provision clarifying that the re-
10 quirements described in subparagraph (A) shall
11 have no effect on State escheatment laws.

12 “(D) For purposes of such revised regula-
13 tions—

14 “(i) a security holder shall be consid-
15 ered a ‘missing security holder’ if a check
16 is sent to the security holder and the check
17 is not negotiated before the earlier of the
18 paying agent sending the next regularly
19 scheduled check or the elapsing of 6
20 months after the sending of the not yet ne-
21 gotiated check; and

22 “(ii) the term ‘paying agent’ includes
23 any issuer, transfer agent, broker, dealer,
24 investment adviser, indenture trustee, cus-
25 todian, or any other person that accepts

1 payments from the issuer of a security and
2 distributes the payments to the holders of
3 the security.

4 “(2) RULEMAKING.—The Commission shall
5 adopt such rules, regulations, and orders necessary
6 to implement this subsection no later than 1 year
7 after the date of enactment of this subsection. In
8 proposing such rules, the Commission shall seek to
9 minimize disruptions to current systems used by or
10 on behalf of paying agents to process payment to ac-
11 count holders and avoid requiring multiple paying
12 agents to send written notification to a missing secu-
13 rity holder regarding the same not yet negotiated
14 check.”.

15 **SEC. 7422. SHORT SALE REFORMS.**

16 (a) SHORT SALE DISCLOSURE.—Section 13(f) of the
17 Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is
18 amended by redesignating paragraphs (2), (3), (4), and
19 (5) as paragraphs (3), (4), (5), and (6), respectively, and
20 inserting after paragraph (1) the following:

21 “(2)(A) Every institutional investment manager
22 that effects a short sale of an equity security shall
23 also file a report on a daily basis with the Commis-
24 sion in such form as the Commission, by rule, may
25 prescribe. Such report shall include, as applicable,

1 the name of the institution, the name of the institu-
2 tional investment manager and the title, class,
3 CUSIP number, number of shares or principal
4 amount, aggregate fair market value of each secu-
5 rity, and any additional information requested by
6 the Commission. For purposes of section 552 of title
7 5, United States Code, this subparagraph shall be
8 considered a statute described in subsection
9 (b)(3)(B) of such section. The information contained
10 in reports of an institutional investment manager
11 filed with the Commission pursuant to this section,
12 shall be subject to the same non-disclosure and con-
13 fidentiality protection provided under section
14 204(b)(8) of the Investment Advisers Act of 1940.

15 “(B) The Commission shall prescribe rules pro-
16 viding for the public disclosure of the name of the
17 issuer and the title, class, CUSIP number, aggregate
18 amount of the number of short sales of each secu-
19 rity, and any additional information determined by
20 the Commission following the end of the reporting
21 period. At a minimum, such public disclosure shall
22 occur every month.”.

23 (b) SHORT SELLING ENFORCEMENT.—Section 9 of
24 the Securities Exchange Act of 1934 (15 U.S.C. 78i) is
25 amended—

1 (1) by redesignating subsections (d), (e), (f),
2 (g), (h), and (i) as subsections (e), (f), (g), (h), (i),
3 and (j), respectively; and

4 (2) inserting after subsection (c), the following
5 new subsection:

6 “(d) TRANSACTIONS RELATING TO SHORT SALES OF
7 SECURITIES.—It shall be unlawful for any person, directly
8 or indirectly, by the use of the mails or any means or in-
9 strumentality of interstate commerce, or of any facility of
10 any national securities exchange, or for any member of
11 a national securities exchange to effect, alone or with one
12 or more other persons, a manipulative short sale of any
13 security. The Commission shall issue such other rules as
14 are necessary or appropriate to ensure that the appro-
15 priate enforcement options and remedies are available for
16 violations of this subsection in the public interest or for
17 the protection of investors.”.

18 (c) INVESTOR NOTIFICATION.—Section 15 of the Se-
19 curities Exchange Act of 1934 (15 U.S.C. 78o) is amend-
20 ed—

21 (1) by redesignating subsections (e), (f), (g),
22 (h), and (i) as subsections (f), (g), (h), (i), and (j),
23 respectively; and

24 (2) inserting after subsection (d) the following
25 new subsection:

1 “(e) NOTICES TO CUSTOMERS REGARDING SECURI-
2 TIES LENDING.—Every registered broker or dealer shall
3 provide notice to its customers that they may elect not
4 to allow their fully paid securities to be used in connection
5 with short sales. If a broker or dealer uses a customer’s
6 securities in connection with short sales, the broker or
7 dealer shall provide notice to its customer that the broker
8 or dealer may receive compensation in connection with
9 lending the customer’s securities. The Commission, by
10 rule, as it deems necessary or appropriate in the public
11 interest and for the protection of investors, may prescribe
12 the form, content, time, and manner of delivery of any
13 notice required under this paragraph.”.

14 **SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.**

15 (a) APPROVAL PROCESS.—Section 19(b)(2) of the
16 Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2))
17 is amended to read as follows:

18 “(2) FILING PROCEDURES.—

19 “(A) IN GENERAL.—Within thirty-five
20 days of the date of publication of notice of the
21 filing of a proposed rule change in accordance
22 with paragraph (1) of this subsection, or within
23 such longer period as the Commission may des-
24 ignate up to ninety days of such date if it finds
25 such longer period to be appropriate and pub-

lishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

“(i) by order approve such proposed rule change; or

“(ii) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

“(B) PROCEEDINGS.—Proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 200 days from the date of receipt of a proper filing. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents. The Commission shall approve a proposed rule change of a self-regu-

1 latory organization if it finds that such pro-
2 posed rule change is consistent with the re-
3 quirements of this title and the rules and regu-
4 lations thereunder applicable to such organiza-
5 tion. The Commission shall disapprove a pro-
6 posed rule change of a self-regulatory organiza-
7 tion if it does not make such finding. The Com-
8 mission shall not approve any proposed rule
9 change prior to the thirtieth day after the date
10 of publication of notice of the filing thereof, un-
11 less the Commission finds good cause for so
12 doing and publishes its reasons for so finding.”.

13 (b) RULES.—Not later than 12 months after the date
14 of enactment of this Act, the Commission shall issue rules
15 implementing a disapproval process for filings submitted
16 on or after the effective date of such rules.

17 **PART 5—SECURITIES INVESTOR PROTECTION**
18 **ACT AMENDMENTS**

19 **SEC. 7501. INCREASING THE MINIMUM ASSESSMENT PAID**
20 **BY SIPC MEMBERS.**

21 Section 4(d)(1)(C) of the Securities Investor Protec-
22 tion Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended
23 by striking “\$150 per annum” and inserting the following:
24 “0.02 percent of the gross revenues from the securities
25 business of such member of SIPC”.

1 **SEC. 7502. INCREASING THE BORROWING LIMIT ON TREAS-**
 2 **URY LOANS.**

3 Section 4(h) of the Securities Investor Protection Act
 4 of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of
 5 not to exceed \$1,000,000,000” and inserting “the lesser
 6 of \$2,500,000,000 or the target amount of the SIPC Fund
 7 specified in the bylaws of SIPC”.

8 **SEC. 7503. INCREASING THE CASH LIMIT OF PROTECTION.**

9 Section 9 of the Securities Investor Protection Act
 10 of 1970 (15 U.S.C. 78fff–3) is amended—

11 (1) in subsection (a)(1), by striking “\$100,000
 12 for each such customer” and inserting “the standard
 13 maximum cash advance amount for each such cus-
 14 tomer, as determined in accordance with subsection
 15 (d)”;

16 (2) by adding the following new subsections:

17 “(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT
 18 DEFINED.—For purposes of this section, the term ‘stand-
 19 ard maximum cash advance amount’ means \$250,000, as
 20 such amount may be adjusted after March 31, 2010, as
 21 provided under subsection (e).

22 “(e) INFLATION ADJUSTMENT.—

23 “(1) IN GENERAL.—No later than April 1,
 24 2010, and every 5 years thereafter, and subject to
 25 the approval of the Commission as provided under
 26 section 3(e)(2), the Board of Directors of SIPC shall

1 determine whether an inflation adjustment to the
2 standard maximum cash advance amount is appro-
3 priate. If the Board of Directors of SIPC determines
4 such an adjustment is appropriate, then the stand-
5 ard maximum cash advance amount shall be an
6 amount equal to—

7 “(A) \$250,000 multiplied by

8 “(B) the ratio of the annual value of the
9 Personal Consumption Expenditures Chain-
10 Type Price Index (or any successor index there-
11 to), published by the Department of Commerce,
12 for the calendar year preceding the year in
13 which such determination is made, to the pub-
14 lished annual value of such index for the cal-
15 endar year preceding the year in which this
16 subsection was enacted.

17 The index values used in calculations under this
18 paragraph shall be, as of the date of the calculation,
19 the values most recently published by the Depart-
20 ment of Commerce.

21 “(2) ROUNDING.—If the standard maximum
22 cash advance amount determined under paragraph
23 (1) for any period is not a multiple of \$10,000, the
24 amount so determined shall be rounded down to the
25 nearest \$10,000.

1 “(3) PUBLICATION AND REPORT TO THE CON-
2 GRESS.—Not later than April 5 of any calendar year
3 in which a determination is required to be made
4 under paragraph (1)—

5 “(A) the Commission shall publish in the
6 Federal Register the standard maximum cash
7 advance amount; and

8 “(B) the Board of Directors of SIPC shall
9 submit a report to the Congress stating the
10 standard maximum cash advance amount.

11 “(4) IMPLEMENTATION PERIOD.—Any adjust-
12 ment to the standard maximum cash advance
13 amount shall take effect on January 1 of the year
14 immediately succeeding the calendar year in which
15 such adjustment is made.

16 “(5) INFLATION ADJUSTMENT CONSIDER-
17 ATIONS.—In making any determination under para-
18 graph (1) to increase the standard maximum cash
19 advance amount, the Board of Directors of SIPC
20 shall consider—

21 “(A) the overall state of the fund and the
22 economic conditions affecting members of
23 SIPC;

24 “(B) the potential problems affecting mem-
25 bers of SIPC; and

1 “(C) such other factors as the Board of
2 Directors of SIPC may determine appro-
3 priate.”.

4 **SEC. 7504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PRO-**
5 **CEEDINGS.**

6 Section 5(b)(3) of the Securities Investor Protection
7 Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

8 (1) by striking “SIPC has determined that the
9 liabilities of the debtor to unsecured general credi-
10 tors and to subordinated lenders appear to aggre-
11 gate less than \$750,000 and that”; and

12 (2) by striking “five hundred” and inserting
13 “five thousand”.

14 **SEC. 7505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.**

15 Section 9(a)(4) of the Securities Investor Protection
16 Act of 1970 (15 U.S.C. 78fff–3(a)(4)) is amended by in-
17 serting “an insider,” after “or net profits of the debtor,”.

18 **SEC. 7506. ELIGIBILITY FOR DIRECT PAYMENT PROCE-**
19 **DURE.**

20 Section 10(a)(4) of the Securities Investor Protection
21 Act of 1970 (15 U.S.C. 78fff–4(a)(4)) is amended by
22 striking “\$250,000” and inserting “\$850,000”.

1 **SEC. 7507. INCREASING THE FINE FOR PROHIBITED ACTS**
2 **UNDER SIPA.**

3 Section 14(c) of the Securities Investor Protection
4 Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

5 (1) in paragraph (1), by striking “\$50,000”
6 and inserting “\$250,000”; and

7 (2) in paragraph (2), by striking “\$50,000”
8 and inserting “\$250,000”.

9 **SEC. 7508. PENALTY FOR MISREPRESENTATION OF SIPC**
10 **MEMBERSHIP OR PROTECTION.**

11 Section 14 of the Securities Investor Protection Act
12 of 1970 (15 U.S.C. 78jjj) is amended by adding at the
13 end the following new subsection:

14 “(d) MISREPRESENTATION OF SIPC MEMBERSHIP
15 OR PROTECTION.—

16 “(1) IN GENERAL.—Any person who falsely
17 represents by any means (including, without limita-
18 tion, through the Internet or any other medium of
19 mass communication), with actual knowledge of the
20 falsity of the representation and with an intent to
21 deceive or cause injury to another, that such person,
22 or another person, is a member of SIPC or that any
23 person or account is protected or is eligible for pro-
24 tection under this Act or by SIPC, shall be liable for
25 any damages caused thereby and shall be fined not

1 more than \$250,000 or imprisoned for not more
2 than 5 years.

3 “(2) INJUNCTIONS.—Any court having jurisdic-
4 tion of a civil action arising under this Act may
5 grant temporary injunctions and final injunctions on
6 such terms as the court deems reasonable to prevent
7 or restrain any violation of paragraph (1). Any such
8 injunction may be served anywhere in the United
9 States on the person enjoined, shall be operative
10 throughout the United States, and shall be enforce-
11 able, by proceedings in contempt or otherwise, by
12 any United States court having jurisdiction over that
13 person. The clerk of the court granting the injunc-
14 tion shall, when requested by any other court in
15 which enforcement of the injunction is sought, trans-
16 mit promptly to the other court a certified copy of
17 all papers in the case on file in such clerk’s office.”.

18 **SEC. 7509. FUTURES HELD IN A PORTFOLIO MARGIN SECU-**
19 **RITIES ACCOUNT PROTECTION.**

20 (a) SIPC ADVANCES.—Section 9(a)(1) of the Securi-
21 ties Investor Protection Act of 1970 (15 U.S.C. 78fff–
22 3(a)(1)) is amended by inserting “or options on futures
23 contracts” after “claim for securities”.

24 (b) DEFINITIONS.—Section 16 of such Act (15
25 U.S.C. 78lll) is amended—

1 (1) by amending paragraph (2) to read as fol-
2 lows:

3 “(2) CUSTOMER.—

4 “(A) IN GENERAL.—The term ‘customer’
5 of a debtor means any person (including any
6 person with whom the debtor deals as principal
7 or agent) who has a claim on account of securi-
8 ties received, acquired, or held by the debtor in
9 the ordinary course of its business as a broker
10 or dealer from or for the securities accounts of
11 such person for safekeeping, with a view to sale,
12 to cover consummated sales, pursuant to pur-
13 chases, as collateral, security, or for purposes of
14 effecting transfer. The term ‘customer’ includes
15 any person who has a claim against the debtor
16 arising out of sales or conversions of such secu-
17 rities.

18 “(B) INCLUDED PERSONS.—The term
19 ‘customer’ includes—

20 “(i) any person who has deposited
21 cash with the debtor for the purpose of
22 purchasing securities; and

23 “(ii) any person who has a claim
24 against the debtor for, or a claim against
25 the debtor arising out of sales or conver-

1 sions of, cash, securities, futures contracts,
2 or options on futures contracts received,
3 acquired, or held in a portfolio margining
4 account carried as a securities account
5 pursuant to a portfolio margining program
6 approved by the Commission.

7 “(C) EXCLUDED PERSONS.—The term
8 ‘customer’ does not include—

9 “(i) any person to the extent that the
10 claim of such person arises out of trans-
11 actions with a foreign subsidiary of a mem-
12 ber of SIPC;

13 “(ii) any person to the extent that
14 such person has a claim for cash or securi-
15 ties which by contract, agreement, or un-
16 derstanding, or by operation of law, is part
17 of the capital of the debtor, or is subordi-
18 nated to the claims of any or all creditors
19 of the debtor, notwithstanding that some
20 ground exists for declaring such contract,
21 agreement, or understanding void or void-
22 able in a suit between the claimant and the
23 debtor; or

24 “(iii) any person to the extent such
25 person has a claim relating to any open re-

1 purchase or open reverse repurchase agree-
2 ment.

3 For purposes of this paragraph, the term ‘re-
4 purchase agreement’ means the sale of a secu-
5 rity at a specified price with a simultaneous
6 agreement or obligation to repurchase the secu-
7 rity at a specified price on a specified future
8 date.”;

9 (2) in paragraph (4), by inserting after the first
10 sentence the following new sentence: “In the case of
11 portfolio margining accounts of customers that are
12 carried as securities accounts pursuant to a portfolio
13 margining program approved by the Commission,
14 such term shall also include futures contracts and
15 options on futures contracts received, acquired, or
16 held by or for the account of a debtor from or for
17 such accounts, and the proceeds thereof.”;

18 (3) in paragraph (9), by inserting before “Such
19 term” in the matter following subparagraph (L) the
20 following: “The term includes revenues earned by a
21 broker or dealer in connection with transactions in
22 customers’ portfolio margining accounts carried as
23 securities accounts pursuant to a portfolio margining
24 program approved by the Commission.”; and

25 (4) in paragraph (11)—

1 (A) by amending subparagraph (A) to read
2 as follows:

3 “(A) calculating the sum which would have
4 been owed by the debtor to such customer if the
5 debtor had liquidated, by sale or purchase on
6 the filing date—

7 “(i) all securities positions of such
8 customer (other than customer name secu-
9 rities reclaimed by such customer); and

10 “(ii) all positions in futures contracts
11 and options on futures contracts held in a
12 portfolio margining account carried as a
13 securities account pursuant to a portfolio
14 margining program approved by the Com-
15 mission; minus”; and

16 (B) by inserting before “In determining”
17 in the matter following subparagraph (C) the
18 following: “A claim for a commodity futures
19 contract received, acquired, or held in a port-
20 folio margining account pursuant to a portfolio
21 margining program approved by the Commis-
22 sion, or a claim for a security futures contract,
23 shall be deemed to be a claim for the mark-to-
24 market (variation) payments due with respect

1 to such contract as of the filing date, and such
2 claim shall be treated as a claim for cash.”.

3 **SEC. 7510. STUDY AND REPORT ON THE FEASIBILITY OF**
4 **RISK-BASED ASSESSMENTS FOR SIPC MEM-**
5 **BERS.**

6 (a) STUDY REQUIRED.—The Comptroller General of
7 the United States shall conduct a study on whether the
8 Securities Investor Protection Corporation (hereafter in
9 this section referred to as “SIPC”) should be required to
10 impose assessments, on its member brokers and dealers,
11 based on risk for the purpose of adequately maintaining
12 the SIPC Fund and to provide additional levels of cov-
13 erage on an optional basis.

14 (b) CONTENT.—The Comptroller General in con-
15 ducting this study shall—

16 (1) identify and examine available approaches,
17 including modeling, to measure broker and dealer
18 operational risk;

19 (2) analyze whether the available approaches to
20 measure broker and dealer operational risk can be
21 used in managing the aggregate risk to the SIPC
22 Fund;

23 (3) explore whether objective measures like the
24 volume of assets of the SIPC member, previous en-
25 forcement and compliance actions taken by regu-

1 latory bodies against the SIPC member, or the num-
2 ber of years the SIPC member has been in oper-
3 ation, among other factors, can be used to assess the
4 probability the fund will incur a loss with respect to
5 the SIPC member;

6 (4) examine the impact that risk-based assess-
7 ments could have on large and small brokers and
8 dealers;

9 (5) examine the impact that risk-based assess-
10 ments could have on institutional and retail brokers
11 and dealers; and

12 (6) examine the feasibility of SIPC providing
13 additional levels of coverage on an optional basis,
14 what those additional levels of coverage should be,
15 and the appropriate risk-based premium for pro-
16 viding additional coverage.

17 (c) CONSULTATION.—The Comptroller General in
18 planning and conducting this study shall consult with the
19 Securities and Exchange Commission, the Federal Deposit
20 Insurance Corporation, SIPC, the Financial Industry Reg-
21 ulatory Authority, and any other public or private sector
22 organization that the Comptroller General considers ap-
23 propriate.

24 (d) REPORT REQUIRED.—Not later than 1 year after
25 the date of enactment of this subtitle, the Comptroller

1 general shall submit a report of the results of the study
2 required by this section to the Committee on Banking,
3 Housing, and Urban Affairs of the Senate and the Com-
4 mittee on Financial Services of the House of Representa-
5 tives.

6 **PART 6—SARBANES-OXLEY ACT AMENDMENTS**

7 **SEC. 7601. PUBLIC COMPANY ACCOUNTING OVERSIGHT**
8 **BOARD OVERSIGHT OF AUDITORS OF BRO-**
9 **KERS AND DEALERS.**

10 (a) DEFINITIONS.—(1) Title I of the Sarbanes-Oxley
11 Act of 2002 is amended by adding at the end the following
12 new section:

13 **“SEC. 110. DEFINITIONS.**

14 “For the purposes of this title, and notwithstanding
15 section 2:

16 “(1) AUDIT.—The term ‘audit’ means an exam-
17 ination of the financial statements, reports, docu-
18 ments, procedures or controls, or notices, of any
19 issuer, broker, or dealer by an independent public
20 accounting firm in accordance with the rules of the
21 Board or the Commission (or, for the period pre-
22 ceding the adoption of applicable rules of the Board
23 under section 103, in accordance with then-applica-
24 ble generally accepted auditing and related stand-
25 ards for such purposes), for the purpose of express-

1 ing an opinion on such financial statements, reports,
2 documents, procedures or controls, or notices.

3 “(2) AUDIT REPORT.—The term ‘audit report’
4 means a document, report, notice, or other record—

5 “(A) prepared following an audit per-
6 formed for purposes of compliance by an issuer,
7 broker, or dealer with the requirements of the
8 securities laws; and

9 “(B) in which a public accounting firm ei-
10 ther—

11 “(i) sets forth the opinion of that firm
12 regarding a financial statement, report, no-
13 tice, other document, procedures, or con-
14 trols; or

15 “(ii) asserts that no such opinion can
16 be expressed.

17 “(3) PROFESSIONAL STANDARDS.—The term
18 ‘professional standards’ means—

19 “(A) accounting principles that are—

20 “(i) established by the standard set-
21 ting body described in section 19(b) of the
22 Securities Act of 1933, as amended by this
23 Act, or prescribed by the Commission
24 under section 19(a) of that Act (15 U.S.C.
25 17a(s)) or section 13(b) of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78a(m));
2 and

3 “(ii) relevant to audit reports for par-
4 ticular issuers, brokers, or dealers, or dealt
5 with in the quality control system of a par-
6 ticular registered public accounting firm;
7 and

8 “(B) auditing standards, standards for at-
9 testation engagements, quality control policies
10 and procedures, ethical and competency stand-
11 ards, and independence standards (including
12 rules implementing title II) that the Board or
13 the Commission determines—

14 “(i) relate to the preparation or
15 issuance of audit reports for issuers, bro-
16 kers, or dealers; and

17 “(ii) are established or adopted by the
18 Board under section 103(a), or are pro-
19 mulgated as rules of the Commission.

20 “(4) BROKER.—The term ‘broker’ means a
21 broker (as such term is defined in section 3(a)(4) of
22 the Securities Exchange Act of 1934 (15 U.S.C.
23 78c(a)(4))) that is required to file a balance sheet,
24 income statement, or other financial statement
25 under section 17(e)(1)(A) of such Act (15 U.S.C.

1 78q(e)(1)(A)), where such balance sheet, income
 2 statement, or financial statement is required to be
 3 certified by a registered public accounting firm.

4 “(5) DEALER.—The term ‘dealer’ means a
 5 dealer (as such term is defined in section 3(a)(5) of
 6 the Securities Exchange Act of 1934 (15 U.S.C.
 7 78c(a)(5))) that is required to file a balance sheet,
 8 income statement, or other financial statement
 9 under section 17(e)(1)(A) of such Act (15 U.S.C.
 10 78q(e)(1)(A)), where such balance sheet, income
 11 statement, or financial statement is required to be
 12 certified by a registered public accounting firm.

13 “(6) SELF-REGULATORY ORGANIZATION.—The
 14 term ‘self-regulatory organization’ has the same
 15 meaning as in section 3(a)(26) of the Securities Ex-
 16 change Act of 1934 (15 U.S.C. 78c(a)(26)).”.

17 (2) The table of sections in section 1(b) of such Act
 18 is amended, by inserting after the item relating to section
 19 109 the following new item:

“Sec. 110. Definitions.”.

20 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
 21 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
 22 Section 101 of such Act is amended—

23 (1) by striking “issuers” each place it appears
 24 and inserting “issuers, brokers, and dealers”;

1 (2) in subsection (a), by striking “public com-
2 panies” and inserting “companies”; and

3 (3) in subsection (a), by striking “for compa-
4 nies the securities of which are sold to, and held by
5 and for, public investors”.

6 (c) REGISTRATION WITH THE BOARD.—Section 102
7 of such Act is amended—

8 (1) in subsection (a), by striking “Beginning
9 180 days after the date of the determination of the
10 Commission under section 101(d), it” and inserting
11 “it”;

12 (2) in subsections (a) and (b)(2)(G), by striking
13 “issuer” each place it appears and inserting “issuer,
14 broker, or dealer”; and

15 (3) in subsection (b)(2)(A), by striking
16 “issuers” and inserting “issuers, brokers, and deal-
17 ers”.

18 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
19 of such Act is amended—

20 (1) in paragraph (1), by striking “and such eth-
21 ics standards” and inserting “such ethics standards,
22 and such independence standards”;

23 (2) in paragraph (2)(A)(iii), by striking “de-
24 scribe in each audit report” and inserting “in each
25 audit report for an issuer, describe”; and

1 (3) in paragraph (2)(B)(i), by striking
2 “issuers” and inserting “issuers, brokers, and deal-
3 ers”.

4 (e) INSPECTIONS BY REGISTERED ACCOUNTING
5 FIRMS.—Subsection (a) of Section 104 of such Act is
6 amended—

7 (1) by striking “(a) IN GENERAL.—The Board
8 shall” and inserting the following:

9 “(a) IN GENERAL.—

10 “(1) The Board shall”; and

11 (2) by adding at the end of such subsection the
12 following:

13 “(2) INSPECTIONS OF AUDIT REPORT FOR BRO-
14 KERS AND DEALERS.—

15 “(A) The Board may, by rule, conduct and
16 require a program of inspection in accordance
17 with paragraph (a)(1), on a basis to be deter-
18 mined by the Board, of registered public ac-
19 counting firms that provide one or more audit
20 reports for a broker or dealer. The Board, in
21 establishing such a program, may allow for dif-
22 ferentiation among classes of brokers and deal-
23 ers, as appropriate.

24 “(B) If the Board determines to establish
25 a program of inspection pursuant to subpara-

graph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

“(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

“(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (a)(2)(A) of this section.

“(3) CONFORMING AMENDMENT.—Section 17 (e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e)(1)(A)) is amended by striking

1 ‘registered public accounting firm’ and inserting
2 ‘independent public accounting firm or by a reg-
3 istered public accounting firm if registration is re-
4 quired under the Sarbanes-Oxley Act of 2002 as
5 amended.’.”.

6 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
7 CEEDINGS.—Section 105(c)(7)(B) of such Act is amend-
8 ed—

9 (1) in the subparagraph heading, by inserting
10 “, BROKER, OR DEALER” after “ISSUER”;

11 (2) by striking “any issuer” each place it ap-
12 pears and inserting “any issuer, broker, or dealer”;
13 and

14 (3) by striking “an issuer under this sub-
15 section” and inserting “a registered public account-
16 ing firm under this subsection”.

17 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
18 106 of such Act is amended—

19 (1) in subsection (a)(1), by striking “issuer”
20 and inserting “issuer, broker, or dealer”; and

21 (2) in subsection (a)(2), by striking “issuers”
22 and inserting “issuers, brokers, or dealers”.

23 (h) FUNDING.—Section 109 of such Act is amend-
24 ed—

1 (1) in subsection (c)(2), by striking “subsection
2 (i)” and inserting “subsection (j)”;

3 (2) in subsection (d)(2), by striking “allowing
4 for differentiation among classes of issuers, as ap-
5 propriate” and inserting “and among brokers and
6 dealers in accordance with subsection (h), and allow-
7 ing for differentiation among classes of issuers and
8 brokers and dealers, as appropriate”;

9 (3) in subsection (d), by inserting at the end
10 the following new paragraph:

11 “(3) BROKERS AND DEALERS.—The rules of
12 the Board under paragraph (1) shall provide that
13 the allocation, assessment, and collection by the
14 Board (or an agent appointed by the Board) of the
15 fee established under paragraph (1) with respect to
16 brokers and dealers shall not begin until the first
17 day of the first full fiscal year beginning after the
18 date of the enactment of this paragraph.”;

19 (4) by redesignating subsections (h), (i), and (j)
20 as subsections (i), (j), and (k), respectively; and

21 (5) by inserting after subsection (g) the fol-
22 lowing new subsection:

23 “(h) ALLOCATION OF ACCOUNTING SUPPORT FEES
24 AMONG BROKERS AND DEALERS.—

1 “(1) IN GENERAL.—Any amount due from bro-
2 kers and dealers (or a particular class of such bro-
3 kers and dealers) under this section to fund the
4 budget of the Board shall be allocated among and
5 payable by such brokers and dealers (or such bro-
6 kers and dealers in a particular class, as applicable).
7 A broker or dealer’s allocation shall be in proportion
8 to the broker or dealer’s net capital compared to the
9 total net capital of all brokers and dealers, in ac-
10 cordance with the rules of the Board.

11 “(2) OBLIGATION TO PAY.—Every broker or
12 dealer shall pay the share of a reasonable annual ac-
13 counting support fee or fees allocated to such broker
14 or dealer under this section.”.

15 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
16 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
17 Sarbanes-Oxley Act of 2002 is amended—

18 (1) by redesignating clauses (ii) and (iii) as
19 clauses (iii) and (iv), respectively; and

20 (2) by inserting after clause (i) the following
21 new clause:

22 “(ii) to a self-regulatory organization,
23 in the case of an investigation that con-
24 cerns an audit report for a broker or deal-

1 er that is subject to the jurisdiction of
2 such self-regulatory organization;”.

3 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
4 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of
5 such Act is amended—

6 (1) in subclause (III), by striking “and”;

7 (2) in subclause (IV), by striking the comma
8 and inserting “; and”; and

9 (3) by inserting after subclause (IV) the fol-
10 lowing new subclause:

11 “(V) a self-regulatory organiza-
12 tion, with respect to an audit report
13 for a broker or dealer that is subject
14 to the jurisdiction of such self-regu-
15 latory organization,”.

16 **SEC. 7602. FOREIGN REGULATORY INFORMATION SHARING.**

17 (a) DEFINITION.—Section 2(a) of the Sarbanes-
18 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
19 inserting after paragraph (16) the following:

20 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
21 ITY.—The term ‘foreign auditor oversight authority’
22 means any governmental body or other entity em-
23 powered by a foreign government to conduct inspec-
24 tions of public accounting firms or otherwise to ad-

1 minister or enforce laws related to the regulation of
2 public accounting firms.”.

3 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
4 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
5 U.S.C. 7215(b)(5)) is amended by adding at the end the
6 following:

7 “(C) AVAILABILITY TO FOREIGN OVER-
8 SIGHT AUTHORITIES.—When in the Board’s
9 discretion it is necessary to accomplish the pur-
10 poses of this Act or to protect investors, and
11 without the loss of its status as confidential and
12 privileged in the hands of the Board, all infor-
13 mation referred to in subparagraph (A) that re-
14 lates to a public accounting firm within the in-
15 spection authority, or other regulatory or law
16 enforcement jurisdiction, of a foreign auditor
17 oversight authority may be made available to
18 the foreign auditor oversight authority if the
19 foreign auditor oversight authority provides
20 such assurances of confidentiality as the Board
21 determines appropriate.”.

22 (c) CONFORMING AMENDMENT.—Section
23 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
24 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
25 graph (B)” and inserting “subparagraphs (B) and (C)”.

1 **SEC. 7603. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
2 **DUCED AND EXCHANGED WITH FOREIGN**
3 **COUNTERPARTS.**

4 Section 106 of the Sarbanes-Oxley Act of 2002 (15
5 U.S.C. 7216) is amended—

6 (1) by amending subsection (b) to read as fol-
7 lows:

8 “(b) PRODUCTION OF DOCUMENTS.—

9 “(1) PRODUCTION BY FOREIGN FIRMS.—If a
10 foreign public accounting firm issues an audit re-
11 port, performs audit work, conducts interim reviews,
12 or performs material services upon which a reg-
13 istered public accounting firm relies in the conduct
14 of an audit or interim review, the foreign public ac-
15 counting firm shall produce its audit work papers
16 and all other documents related to any such audit
17 work or interim review to the Commission or the
18 Board when requested by the Commission or the
19 Board and the foreign public accounting firm shall
20 be subject to the jurisdiction of the courts of the
21 United States for purposes of enforcement of any re-
22 quest of such documents.

23 “(2) OTHER PRODUCTION.—Any registered
24 public accounting firm that relies, in whole or in
25 part, on the work of a foreign public accounting firm

1 in issuing an audit report, performing audit work, or
2 conducting an interim review, shall—

3 “(A) produce the foreign public accounting
4 firm’s audit work papers and all other docu-
5 ments related to any such work in response to
6 a request for production by the Commission or
7 the Board; and

8 “(B) secure the agreement of any foreign
9 public accounting firm to such production, as a
10 condition of its reliance on the work of that for-
11 eign public accounting firm.”;

12 (2) by redesignating subsection (d) as sub-
13 section (g); and

14 (3) by inserting after subsection (c) the fol-
15 lowing new subsections:

16 “(d) SERVICE OF REQUESTS OR PROCESS.—Any for-
17 eign public accounting firm that performs work for a do-
18 mestically registered public accounting firm shall furnish
19 to the domestically firm a written irrevocable consent and
20 power of attorney that designates the domestic firm as an
21 agent upon whom may be served any process, pleadings,
22 or other papers in any action brought to enforce this sec-
23 tion. Any foreign public accounting firm that issues an
24 audit report, performs audit work, performs interim re-
25 views, or performs other material services upon which a

1 registered public accounting firm relies in the conduct of
2 an audit or interim review, shall designate to the Commis-
3 sion or the Board an agent in the United States upon
4 whom may be served any process, pleading, or other pa-
5 pers in any action brought to enforce this section or any
6 request by the Commission or the Board under this sec-
7 tion.

8 “(e) SANCTIONS.—A willful refusal to comply, in
9 whole in or in part, with any request by the Commission
10 or the Board under this section, shall be a violation of
11 this Act.

12 “(f) OTHER MEANS OF SATISFYING PRODUCTION
13 OBLIGATIONS.—Notwithstanding any other provision of
14 this section, the staff of the Commission or Board may
15 allow foreign public accounting firms subject to this sec-
16 tion to meet production obligations under this section
17 though alternate means, such as through foreign counter-
18 parts of the Commission or Board.”.

19 **SEC. 7604. CONFORMING AMENDMENT RELATED TO REG-**
20 **ISTRATION.**

21 Section 102(b)(3)(A) of the Sarbanes-Oxley Act of
22 2002 (15 U.S.C. 7212(b)(3)(A)) is amended by striking
23 “by the Board” and inserting “by the Commission or the
24 Board”.

1 **SEC. 7605. FAIR FUND AMENDMENTS.**

2 Section 308 of the Sarbanes-Oxley Act of 2002 (15
3 U.S.C. 7246(a)) is amended—

4 (1) by amending subsection (a) to read as fol-
5 lows:

6 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
7 LIEF OF VICTIMS.—If in any judicial or administrative ac-
8 tion brought by the Commission under the securities laws
9 (as such term is defined in section 3(a)(47) of the Securi-
10 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the
11 Commission obtains a civil penalty against any person for
12 a violation of such laws or the rules and regulations there-
13 under, or such person agrees in settlement of any such
14 action to such civil penalty, the amount of such civil pen-
15 alty or settlement shall, on the motion or at the direction
16 of the Commission, be added to and become part of a
17 disgorgement fund or other fund established for the ben-
18 efit of the victims of such violation.”;

19 (2) in subsection (b), by—

20 (A) striking “for a disgorgement fund de-
21 scribed in subsection (a)” and inserting “for a
22 disgorgement fund or other fund described in
23 subsection (a)”;

24 (B) striking “in the disgorgement fund”
25 and inserting “in such fund”; and

26 (3) by striking subsection (e).

1 **SEC. 7606. EXEMPTION FOR NONACCELERATED FILERS.**

2 (a) EXEMPTION.—Section 404 of the Sarbanes-Oxley
3 Act of 2002 is amended by adding at the end the fol-
4 lowing:

5 “(c) EXEMPTION FOR SMALLER ISSUERS.—Sub-
6 section (b) shall not apply with respect to any audit report
7 prepared for an issuer that is not an accelerated filer with-
8 in the meaning Rule 12b–2 of the Commission (17 CFR
9 240.12b–2).”.

10 (b) STUDY.—The Securities and Exchange Commis-
11 sion shall conduct a study to determine how the Commis-
12 sion could reduce the burden of complying with section
13 404(b) of the Sarbanes-Oxley Act of 2002 for companies
14 whose market capitalization is between \$75,000,000 and
15 \$250,000,000 for the relevant reporting period while
16 maintaining investor protections for such companies. The
17 study shall also consider whether any such methods of re-
18 ducing the compliance burden or a complete exemption for
19 such companies from compliance with such section would
20 encourage companies to list on exchanges in the United
21 States in their initial public offerings. Not later than 9
22 months after the date of the enactment of this subtitle,
23 the Commission shall transmit a report of such study to
24 Congress.

1 **SEC. 7607. WHISTLEBLOWER PROTECTION AGAINST RETAL-**
2 **IATION BY A SUBSIDIARY OF AN ISSUER.**

3 Section 1514A(a) of title 18, United States Code, is
4 amended by inserting “including any subsidiary or affil-
5 iate whose financial information is included in the consoli-
6 dated financial statements of such company,” after “(15
7 U.S.C. 78o(d)),”.

8 **SEC. 7608. CONGRESSIONAL ACCESS TO INFORMATION.**

9 Section 101 of the Sarbanes-Oxley Act of 2002 is
10 amended by adding at the end the following:

11 “(i) CONGRESSIONAL ACCESS TO INFORMATION.—
12 Nothing in this section shall prevent the Board from re-
13 sponding to requests for reports from the Committee’s
14 specified under subsection (h) about the activities or pro-
15 grams of the Board, provided that any confidential infor-
16 mation contained therein shall be subject to the provisions
17 of section 105(b)(5).”.

18 **SEC. 7609. CREATION OF OMBUDSMAN FOR THE PCAOB.**

19 (a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act
20 of 2002 (15 U.S.C. 7211 et seq.), as amended by section
21 7601(a)(1), is further amended by adding at the end the
22 following new section:

23 **“SEC. 111. OMBUDSMAN.**

24 “(a) ESTABLISHMENT REQUIRED.—Not later than
25 180 days after the date of enactment of the Investor Pro-
26 tection Act, the Board shall appoint an ombudsman for

1 the Board. The Ombudsman shall report directly to the
2 Chairman.

3 “(b) DUTIES OF OMBUDSMAN.—The ombudsman ap-
4 pointed in accordance with subsection (a) for the Board
5 shall—

6 “(1) act as a liaison between the Board and—

7 “(A) any registered public accounting firm
8 or issuer with respect to issues or disputes con-
9 cerning the preparation or issuance of any audit
10 report with respect to that issuer; and

11 “(B) any affected registered public ac-
12 counting firm or issuer with respect to—

13 “(i) any problem such firm or issuer
14 may have in dealing with the Board result-
15 ing from the regulatory activities of the
16 Board, particularly with regard to the im-
17 plementation of section 404; and

18 “(ii) issues caused by the relationships
19 of registered public accounting firms and
20 issuers generally;

21 “(2) assure that safeguards exist to encourage
22 complainants to come forward and to preserve con-
23 fidentiality; and

1 “(3) carry out such activities, and any other ac-
 2 tivities assigned by the Board, in accordance with
 3 guidelines prescribed by the Board.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
 5 tions in section 1(b) of such Act is amended, by inserting
 6 after the item relating to section 110 (as added by section
 7 601(a)(2)) the following new item:

“Sec. 111. Ombudsman.”.

8 **SEC. 7610. AUDITING OVERSIGHT BOARD.**

9 The Sarbanes-Oxley Act of 2002 is amended—

10 (1) in section 2(a)(5), by striking “Public Com-
 11 pany Accounting Oversight Board” and inserting
 12 “Auditing Oversight Board”;

13 (2) in section 101(a), by striking “Public Com-
 14 pany Accounting Oversight Board” and inserting
 15 “Auditing Oversight Board”; and

16 (3) in the heading of title I, by striking “**PUB-**
 17 **LIC COMPANY ACCOUNTING OVER-**
 18 **SIGHT BOARD**” and inserting “**AUDITING**
 19 **OVERSIGHT BOARD**”.

20 **PART 7—SENIOR INVESTMENT PROTECTION**

21 **SEC. 7701. FINDINGS.**

22 Congress finds that—

23 (1) many seniors are targeted by salespersons
 24 and advisers using misleading certifications and pro-
 25 fessional designations;

1 (2) many certifications and professional des-
2 ignations used by salespersons and advisers rep-
3 resent limited training or expertise, and may in fact
4 be of no value with respect to advising seniors on fi-
5 nancial and estate planning matters, and far too
6 often, such designations are obtained simply by at-
7 tending a weekend seminar and passing an open
8 book, multiple choice test;

9 (3) many seniors have lost their life savings be-
10 cause salespersons and advisers holding a misleading
11 designation have steered them toward products that
12 were unsuitable for them, given their retirement
13 needs and life expectancies;

14 (4) seniors have a right to clearly know whether
15 they are working with a qualified adviser who under-
16 stands the products and is working in their best in-
17 terest or a self-interested salesperson or adviser ad-
18 vocating particular products; and

19 (5) many existing State laws and enforcement
20 measures addressing the use of certifications, profes-
21 sional designations, and suitability standards in sell-
22 ing financial products to seniors are inadequate to
23 protect senior investors from salespersons and advis-
24 ers using such designations.

1 **SEC. 7702. DEFINITIONS.**

2 For purposes of this part:

3 (1) MISLEADING DESIGNATION.—The term
4 “misleading designation”—

5 (A) means the use of a purported certifi-
6 cation, professional designation, or other cre-
7 dential, that indicates or implies that a sales-
8 person or adviser has special certification or
9 training in advising or servicing seniors; and

10 (B) does not include any legitimate certifi-
11 cation, professional designation, license, or
12 other credential, if—

13 (i) it has been offered by an academic
14 institution having regional accreditation; or

15 (ii) it meets the standards for certifi-
16 cations, licenses, and professional designa-
17 tions outlined by the North American Se-
18 curities Administrators Association (in this
19 part referred to as the “NASAA”) Model
20 Rule on the Use of Senior-Specific Certifi-
21 cations and Professional Designations, as
22 in effect on the date of the enactment of
23 this subtitle, or any successor thereto, or it
24 was issued by or obtained from any State.

25 (2) FINANCIAL PRODUCT.—The term “financial
26 product” means securities, insurance products (in-

1 including insurance products which pay a return,
2 whether fixed or variable), and bank and loan prod-
3 ucts.

4 (3) MISLEADING OR FRAUDULENT MAR-
5 KETING.—The term “misleading or fraudulent mar-
6 keting” means the use of a misleading designation
7 when selling to or advising a senior about the sale
8 of a financial product.

9 (4) SENIOR.—The term “senior” means any in-
10 dividual who has attained the age of 62 years or
11 more.

12 (5) STATE.—The term “State” means each of
13 the 50 States, the District of Columbia, and the un-
14 incorporated territories of Puerto Rico and the U.S.
15 Virgin Islands.

16 **SEC. 7703. GRANTS TO STATES FOR ENHANCED PROTEC-**
17 **TION OF SENIORS FROM BEING MISLED BY**
18 **FALSE DESIGNATIONS.**

19 (a) GRANT PROGRAM.—The Securities and Exchange
20 Commission (in this part referred to as the “Commis-
21 sion”)—

22 (1) shall establish a program in accordance with
23 this part to provide grants to States—

24 (A) to investigate and prosecute misleading
25 and fraudulent marketing practices; or

1 (B) to develop educational materials and
2 training aimed at reducing misleading and
3 fraudulent marketing of financial products to-
4 ward seniors; and

5 (2) may establish such performance objectives,
6 reporting requirements, and application procedures
7 for States and State agencies receiving grants under
8 this part as the Commission determines are nec-
9 essary to carry out and assess the effectiveness of
10 the program under this part.

11 (b) USE OF GRANT AMOUNTS.—A grant under this
12 part may be used (including through subgrants) by the
13 State or the appropriate State agency designated by the
14 State—

15 (1) to fund additional staff to identify, inves-
16 tigate, and prosecute (through civil, administrative,
17 or criminal enforcement actions) cases involving mis-
18 leading or fraudulent marketing of financial prod-
19 ucts to seniors;

20 (2) to fund technology, equipment, and training
21 for regulators, prosecutors, and law enforcement in
22 order to identify salespersons and advisers who tar-
23 get seniors through the use of misleading designa-
24 tions;

1 (3) to fund technology, equipment, and training
2 for prosecutors to increase the successful prosecution
3 of those targeting seniors with the use of misleading
4 designations;

5 (4) to provide educational materials and train-
6 ing to regulators on the appropriateness of the use
7 of designations by salespersons and advisers of fi-
8 nancial products;

9 (5) to provide educational materials and train-
10 ing to seniors to increase their awareness and under-
11 standing of designations; and

12 (6) to develop comprehensive plans to combat
13 misleading or fraudulent marketing of financial
14 products to seniors.

15 (c) GRANT REQUIREMENTS.—

16 (1) MAXIMUM.—The amount of a grant under
17 this part may not exceed \$1,000,000 per fiscal year
18 per State, if all requirements of paragraphs (2), (3),
19 (4), and (5) are met. Such amount shall be limited
20 to \$250,000 per fiscal year per State in any case in
21 which the State meets the requirements of—

22 (A) paragraphs (2) and (3), but not each
23 of paragraphs (4) and (5); or

24 (B) paragraphs (4) and (5), but not each
25 of paragraphs (2) and (3).

1 (2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this subtitle, or any successor thereto.

10 (3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934).

18 (4) APPLICATION OF FIDUCIARY DUTY FOR PERSONALIZED INVESTMENT ADVICE ABOUT SECURITIES.—Nothing in this section shall diminish in any manner nor supersede the standard of conduct applicable to all brokers, dealers and investment advisers providing personalized investment advice about securities as set forth in section 7103 of this Act.

1 (5) STANDARD DESIGNATION RULES FOR IN-
2 SURANCE PRODUCTS.—A State shall have adopted
3 standard rules on the appropriate use of designa-
4 tions in the sale of insurance products, which shall
5 meet or exceed minimum requirements of the Na-
6 tional Association of Insurance Commissioners
7 Model Regulation on the Use of Senior-Specific Cer-
8 tifications and Professional Designations in the Sale
9 of Life Insurance and Annuities, as in effect on the
10 date of the enactment of this subtitle, or any suc-
11 cessor thereto.

12 (6) SUITABILITY AND SUPERVISION RULES FOR
13 ANNUITY PRODUCTS.—A State shall have adopted
14 rules that govern suitability requirements in the sale
15 of annuities which shall meet or exceed the min-
16 imum requirements established by the National As-
17 sociation of Insurance Commissioners Suitability in
18 Annuity Transactions Model Regulation in effect on
19 the date of the enactment of this Act, or any suc-
20 cessor thereto.

21 **SEC. 7704. APPLICATIONS.**

22 To be eligible for a grant under this part, the State
23 or appropriate State agency shall submit to the Commis-
24 sion a proposal to use the grant money to protect seniors
25 from misleading or fraudulent marketing techniques in the

1 offer and sale of financial products, which application
2 shall—

3 (1) identify the scope of the problem;

4 (2) describe how the proposed program will help
5 to protect seniors from misleading or fraudulent
6 marketing in the sale of financial products, includ-
7 ing, at a minimum—

8 (A) by proactively identifying seniors who
9 are victims of misleading and fraudulent mar-
10 keting in the offer and sale of financial prod-
11 ucts;

12 (B) how the proposed program can assist
13 in the investigation and prosecution of those
14 using misleading or fraudulent marketing in the
15 offer and sale of financial products to seniors;
16 and

17 (C) how the proposed program can help
18 discourage and reduce future cases of mis-
19 leading or fraudulent marketing in the offer
20 and sale of financial products to seniors; and

21 (3) describe how the proposed program is to be
22 integrated with other existing State efforts.

1 **SEC. 7705. LENGTH OF PARTICIPATION.**

2 A State receiving a grant under this part shall be
3 provided assistance funds for a period of 3 years, after
4 which the State may reapply for additional funding.

5 **SEC. 7706. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated to carry out
7 this part, \$16,000,000 for each of the fiscal years 2011
8 through 2015.

9 **PART 8—REGISTRATION OF MUNICIPAL**

10 **FINANCIAL ADVISORS**

11 **SEC. 7801. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
12 **REQUIREMENT.**

13 (a) IN GENERAL.—The Securities Exchange Act of
14 1934 (as amended by section 3204) is amended by insert-
15 ing after section 15F (15 U.S.C. 78o–7) the following new
16 section:

17 **“SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
18 **REQUIREMENT.**

19 “(a)(1)(A) It shall be unlawful for any person to
20 make use of the mails or any means or instrumentality
21 of interstate commerce to act as a municipal financial ad-
22 viser unless such person is registered as a municipal finan-
23 cial adviser in accordance with subsection (b).

24 “(B) Subparagraph (A) shall not apply to a natural
25 person associated with a municipal financial adviser, as

1 long as such adviser is registered in accordance with sub-
2 section (b) and is not a natural person.

3 “(2) The Commission, by rule or order, as it deems
4 consistent with the public interest and the protection of
5 investors, may conditionally or unconditionally exempt
6 from paragraph (1) of this section any municipal financial
7 adviser or class of municipal financial advisers specified
8 in such rule or order.

9 “(b)(1) A municipal financial adviser may be reg-
10 istered by filing with the Commission an application for
11 registration in such form and containing such information
12 and documents concerning such municipal financial ad-
13 viser and any persons associated with such municipal fi-
14 nancial adviser as the Commission, by rule, may prescribe
15 as necessary or appropriate in the public interest or for
16 the protection of investors. Within 45 days of the date of
17 the filing of such application (or within such longer period
18 as to which the applicant consents), the Commission
19 shall—

20 “(A) by order grant registration; or

21 “(B) institute proceedings to determine whether reg-
22 istration should be denied. Such proceedings shall include
23 notice of the grounds for denial under consideration and
24 opportunity for hearing and shall be concluded within 120
25 days of the date of the filing of the application for reg-

1 istration. At the conclusion of such proceedings, the Com-
2 mission, by order, shall grant or deny such registration.
3 The Commission may extend the time for conclusion of
4 such proceedings for up to 90 days if it finds good cause
5 for such extension and publishes its reasons for so finding,
6 or for such longer period as to which the applicant con-
7 sents.

8 The Commission shall grant such registration if
9 the Commission finds that the requirements of
10 this section are satisfied. The Commission shall
11 deny such registration if it does not make such
12 a finding or if it finds that if the applicant were
13 so registered, its registration would be subject
14 to suspension or revocation under paragraph
15 (4).

16 “(2) An application for registration of a municipal
17 financial adviser to be formed or organized may be made
18 by a municipal financial adviser to which the municipal
19 financial adviser to be formed or organized is to be the
20 successor. Such application, in such form as the Commis-
21 sion, by rule, may prescribe, shall contain such informa-
22 tion and documents concerning the applicant, the suc-
23 cessor, and any persons associated with the applicant or
24 the successor, as the Commission, by rule, may prescribe
25 as necessary or appropriate in the public interest or for

1 the protection of investors. The grant or denial of registra-
2 tion to such an applicant shall be in accordance with the
3 procedures set forth in paragraph (1) of this subsection.
4 If the Commission grants such registration, the registra-
5 tion shall terminate on the 45th day after the effective
6 date thereof, unless prior thereto the successor shall, in
7 accordance with such rules and regulations as the Com-
8 mission may prescribe, adopt the application for registra-
9 tion as its own.

10 “(3) Any provision of this title (other than section
11 5 and subsection (a) of this section) which prohibits any
12 act, practice, or course of business if the mails or any
13 means or instrumentality of interstate commerce is used
14 in connection therewith shall also prohibit any such act,
15 practice, or course of business by any registered municipal
16 financial adviser or any person acting on behalf of such
17 a municipal financial adviser, irrespective of any use of
18 the mails or any means or instrumentality of interstate
19 commerce in connection therewith.

20 “(4) The Commission, by order, shall censure, place
21 limitations on the activities, functions, or operations of,
22 suspend for a period not exceeding 12 months, or revoke
23 the registration of any municipal financial adviser if it
24 finds, on the record after notice and opportunity for hear-
25 ing, that such censure, placing of limitations, suspension,

1 or revocation is in the public interest and that such munic-
2 ipal financial adviser, whether prior or subsequent to be-
3 coming such, or any person associated with such municipal
4 financial adviser, whether prior or subsequent to becoming
5 so associated—

6 “(A) has willfully made or caused to be made
7 in any application for registration or report required
8 to be filed with the Commission or with any other
9 appropriate regulatory agency under this title, or in
10 any proceeding before the Commission with respect
11 to registration, any statement which was at the time
12 and in the light of the circumstances under which it
13 was made false or misleading with respect to any
14 material fact, or has omitted to state in any such
15 application or report any material fact which is re-
16 quired to be stated therein;

17 “(B) has been convicted within 10 years pre-
18 ceding the filing of any application for registration
19 or at any time thereafter of any felony or mis-
20 demeanor or of a substantially equivalent crime by
21 a foreign court of competent jurisdiction which the
22 Commission finds—

23 “(i) involves the purchase or sale of any
24 security, the taking of a false oath, the making
25 of a false report, bribery, perjury, burglary, any

1 substantially equivalent activity however de-
2 nominated by the laws of the relevant foreign
3 government, or conspiracy to commit any such
4 offense;

5 “(ii) arises out of the conduct of the busi-
6 ness of a municipal financial adviser, broker,
7 dealer, municipal securities dealer, government
8 securities broker, government securities dealer,
9 investment adviser, bank, insurance company,
10 fiduciary, transfer agent, nationally recognized
11 statistical rating organization, foreign person
12 performing a function substantially equivalent
13 to any of the above, or entity or person required
14 to be registered under the Commodity Ex-
15 change Act (7 U.S.C. 1 et seq.) or any substan-
16 tially equivalent foreign statute or regulation;

17 “(iii) involves the larceny, theft, robbery,
18 extortion, forgery, counterfeiting, fraudulent
19 concealment, embezzlement, fraudulent conver-
20 sion, or misappropriation of funds, or securities,
21 or substantially equivalent activity however de-
22 nominated by the laws of the relevant foreign
23 government; or

24 “(iv) involves the violation of section 152,
25 1341, 1342, or 1343 or chapter 25 or 47 of

1 title 18, United States Code, or a violation of
2 a substantially equivalent foreign statute;

3 “(C) is permanently or temporarily enjoined by
4 order, judgment, or decree of any court of competent
5 jurisdiction from acting as a municipal financial ad-
6 viser, investment adviser, underwriter, broker, deal-
7 er, municipal securities dealer, government securities
8 broker, government securities dealer, transfer agent,
9 nationally recognized statistical rating organization,
10 foreign person performing a function substantially
11 equivalent to any of the above, or entity or person
12 required to be registered under the Commodity Ex-
13 change Act or any substantially equivalent foreign
14 statute or regulation, or as an affiliated person or
15 employee of any investment company, bank, insur-
16 ance company, foreign entity substantially equivalent
17 to any of the above, or entity or person required to
18 be registered under the Commodity Exchange Act or
19 any substantially equivalent foreign statute or regu-
20 lation or from engaging in or continuing any con-
21 duct or practice in connection with any such activity,
22 or in connection with the purchase or sale of any se-
23 curity;

24 “(D) has willfully violated any provision of the
25 Securities Act of 1933, the Investment Advisers Act

1 of 1940, the Investment Company Act of 1940, the
2 Commodity Exchange Act, this title, the rules or
3 regulations under any of such statutes, or the rules
4 of the Municipal Securities Rulemaking Board, or is
5 unable to comply with any such provision;

6 “(E) has willfully aided, abetted, counseled,
7 commanded, induced, or procured the violation by
8 any other person of any provision of the Securities
9 Act of 1933, the Investment Advisers Act of 1940,
10 the Investment Company Act of 1940, the Com-
11modity Exchange Act, this title, the rules or regula-
12tions under any of such statutes, or the rules of the
13Municipal Securities Rulemaking Board, or has
14failed reasonably to supervise, with a view to pre-
15venting violations of the provisions of such statutes,
16rules, and regulations, another person who commits
17such a violation, if such other person is subject to
18his supervision. For the purposes of this subpara-
19graph, no person shall be deemed to have failed rea-
20sonably to supervise any other person, if—

21 “(i) there have been established proce-
22dures, and a system for applying such proce-
23dures, which would reasonably be expected to
24prevent and detect, insofar as practicable, any
25such violation by such other person; and

1 “(ii) such person has reasonably dis-
2 charged the duties and obligations incumbent
3 upon him by reason of such procedures and sys-
4 tem without reasonable cause to believe that
5 such procedures and system were not being
6 complied with;

7 “(F) is subject to any order of the Commission
8 barring or suspending the right of the person to be
9 associated with a municipal financial adviser;

10 “(G) has been found by a foreign financial reg-
11 ulatory authority to have—

12 “(i) made or caused to be made in any ap-
13 plication for registration or report required to
14 be filed with a foreign financial regulatory au-
15 thority, or in any proceeding before a foreign fi-
16 nancial regulatory authority with respect to reg-
17 istration, any statement that was at the time
18 and in the light of the circumstances under
19 which it was made false or misleading with re-
20 spect to any material fact, or has omitted to
21 state in any application or report to the foreign
22 financial regulatory authority any material fact
23 that is required to be stated therein;

24 “(ii) violated any foreign statute or regula-
25 tion regarding transactions in securities, or con-

1 tracts of sale of a commodity for future deliv-
2 ery, traded on or subject to the rules of a con-
3 tract market or any board of trade; or

4 “(iii) aided, abetted, counseled, com-
5 manded, induced, or procured the violation by
6 any person of any provision of any statutory
7 provisions enacted by a foreign government, or
8 rules or regulations thereunder, empowering a
9 foreign financial regulatory authority regarding
10 transactions in securities, or contracts of sale of
11 a commodity for future delivery, traded on or
12 subject to the rules of a contract market or any
13 board of trade, or has been found, by a foreign
14 financial regulatory authority, to have failed
15 reasonably to supervise, with a view to pre-
16 venting violations of such statutory provisions,
17 rules, and regulations, another person who com-
18 mits such a violation, if such other person is
19 subject to his supervision; or

20 “(H) is subject to any final order of a State se-
21 curities commission (or any agency or officer per-
22 forming like functions), State authority that super-
23 vises or examines banks, savings associations, or
24 credit unions, State insurance commission (or any
25 agency or office performing like functions), an ap-

1 appropriate Federal banking agency (as defined in sec-
2 tion 3 of the Federal Deposit Insurance Act (12
3 U.S.C. 1813(q))), or the National Credit Union Ad-
4 ministration, that—

5 “(i) bars such person from association with
6 an entity regulated by such commission, author-
7 ity, agency, or officer, or from engaging in the
8 business of securities, insurance, banking, sav-
9 ings association activities, or credit union activi-
10 ties; or

11 “(ii) constitutes a final order based on vio-
12 lations of any laws or regulations that prohibit
13 fraudulent, manipulative, or deceptive conduct.

14 “(5) Pending final determination whether any reg-
15 istration under this subsection shall be revoked, the Com-
16 mission, by order, may suspend such registration, if such
17 suspension appears to the Commission, after notice and
18 opportunity for hearing, to be necessary or appropriate in
19 the public interest or for the protection of investors. Any
20 registered municipal financial adviser may, upon such
21 terms and conditions as the Commission deems necessary
22 or appropriate in the public interest or for the protection
23 of investors, withdraw from registration by filing a written
24 notice of withdrawal with the Commission. If the Commis-
25 sion finds that any registered municipal financial adviser

1 is no longer in existence or has ceased to do business as
2 a municipal financial adviser, the Commission, by order,
3 shall cancel the registration of such municipal financial
4 adviser.

5 “(6)(A) With respect to any person who is associated,
6 who is seeking to become associated, or, at the time of
7 the alleged misconduct, who was associated or was seeking
8 to become associated with a municipal financial adviser,
9 the Commission, by order, shall censure, place limitations
10 on the activities or functions of such person, or suspend
11 for a period not exceeding 12 months, or bar such person
12 from being associated with a broker, dealer, investment
13 adviser, municipal securities dealer, transfer agent, na-
14 tionally recognized statistical rating organization, or mu-
15 nicipal financial adviser, if the Commission finds, on the
16 record after notice and opportunity for a hearing, that
17 such censure, placing of limitations, suspension, or bar is
18 in the public interest and that such person—

19 “(i) has committed or omitted any act, or is
20 subject to an order or finding, enumerated in sub-
21 paragraph (A), (D), (E), (G), or (H) of paragraph
22 (4) of this subsection;

23 “(ii) has been convicted of any offense specified
24 in subparagraph (B) of such paragraph (4) within

1 10 years of the commencement of the proceedings
2 under this paragraph; or

3 “(iii) is enjoined from any action, conduct, or
4 practice specified in subparagraph (C) of such para-
5 graph (4).

6 “(B) It shall be unlawful—

7 “(i) for any person as to whom an order under
8 subparagraph (A) is in effect, without the consent of
9 the Commission, willfully to become, or to be, associ-
10 ated with a municipal financial adviser in contraven-
11 tion of such order; or

12 “(ii) for any municipal financial adviser to per-
13 mit such a person, without the consent of the Com-
14 mission, to become or remain, a person associated
15 with the municipal financial adviser in contravention
16 of such order, if such municipal financial adviser
17 knew, or in the exercise of reasonable care should
18 have known, of such order.

19 “(7) No registered municipal financial adviser shall
20 act as such unless it meets such standards of operational
21 capability and such municipal financial adviser and all
22 natural persons associated with such municipal financial
23 adviser meet such standards of training, experience, com-
24 petence, and such other qualifications as the Commission
25 finds necessary or appropriate in the public interest or for

1 the protection of investors. The Commission shall establish
2 such standards by rules and regulations, which may—

3 “(A) specify that all or any portion of such
4 standards shall be applicable to any class of munic-
5 ipal financial advisers and persons associated with
6 municipal financial advisers;

7 “(B) require persons in any such class to pass
8 tests prescribed in accordance with such rules and
9 regulations, which tests shall, with respect to any
10 class of partners, officers, or supervisory employees
11 (which latter term may be defined by the Commis-
12 sion’s rules and regulations) engaged in the manage-
13 ment of the municipal financial adviser, include
14 questions relating to bookkeeping, accounting, super-
15 vision of employees, maintenance of records, and
16 other appropriate matters; and

17 “(C) provide that persons in any such class
18 other than municipal financial advisers and partners,
19 officers, and supervisory employees of municipal fi-
20 nancial advisers, may be qualified solely on the basis
21 of compliance with such standards of training and
22 such other qualifications as the Commission finds
23 appropriate.

24 The Commission, by rule, may prescribe reasonable fees
25 and charges to defray its costs in carrying out this para-

1 graph, including, but not limited to, fees for any test ad-
2 ministered by it or under its direction.

3 “(c)(1)(A) No municipal financial adviser shall make
4 use of the mails or any means or instrumentality of inter-
5 state commerce in connection with which such municipal
6 financial adviser engages in any fraudulent, deceptive, or
7 manipulative act or practice or violates such rules and reg-
8 ulations regarding conflicts of interest or fair practices,
9 including but not limited to rules and regulations related
10 to political contributions, as the Commission shall pre-
11 scribe in the public interest or for the protection of inves-
12 tors or to maintain fair and orderly markets.

13 “(B) The Commission shall, for the purposes of this
14 paragraph as the Commission finds necessary or appro-
15 priate in the public interest or for the protection of inves-
16 tors, by rules and regulations define, and prescribe means
17 reasonably designed to prevent, such acts and practices
18 as are fraudulent, deceptive, or manipulative.

19 “(2) If the Commission finds, after notice and oppor-
20 tunity for a hearing, that any person subject to the provi-
21 sions of this section or any rule or regulation thereunder
22 has failed to comply with any such provision, rule, or regu-
23 lation in any material respect, the Commission may pub-
24 lish its findings and issue an order requiring such person,
25 and any person who was a cause of the failure to comply

1 due to an act or omission the person knew or should have
2 known would contribute to the failure to comply, to com-
3 ply, or to take steps to effect compliance, with such provi-
4 sion or such rule or regulation thereunder upon such
5 terms and conditions and within such time as the Commis-
6 sion may specify in such order.

7 “(d) Every registered municipal financial adviser
8 shall establish, maintain, and enforce written policies and
9 procedures reasonably designed, taking into consideration
10 the nature of such municipal financial adviser’s business,
11 to prevent the misuse in violation of this title, or the rules
12 or regulations thereunder, of material, nonpublic informa-
13 tion by such municipal financial adviser or any person as-
14 sociated with such municipal financial adviser. The Com-
15 mission, as it deems necessary or appropriate in the public
16 interest or for the protection of investors, shall adopt rules
17 or regulations to require specific policies or procedures
18 reasonably designed to prevent misuse in violation of this
19 title (or the rules or regulations thereunder) of material,
20 nonpublic information.

21 “(e) A municipal financial adviser and any person as-
22 sociated with such municipal financial adviser shall be
23 deemed to have a fiduciary duty to any municipal securi-
24 ties issuer for whom such municipal financial adviser acts
25 as a municipal financial adviser. A municipal financial ad-

1 viser may not engage in any act, practice, or course of
2 business which is not consistent with a municipal financial
3 adviser's fiduciary duty. The Commission shall, for the
4 purposes of this paragraph, by rules and regulations de-
5 fine, and prescribe means reasonably designed to prevent,
6 such acts, practices, and courses of business as are not
7 consistent with a municipal financial adviser's fiduciary
8 duty to its clients.”.

9 (b) DEFINITION.—Section 3(a) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78c(a)) (as amended by
11 section 3201(6)) is amended by adding at the end the fol-
12 lowing new paragraphs:

13 “(78) MUNICIPAL FINANCIAL ADVISER.—

14 “(A) The term ‘municipal financial adviser’
15 means a person who, for compensation, engages
16 in the business of—

17 “(i) providing advice to a municipal
18 securities issuer with respect to—

19 “(I) the issuance or proposed
20 issuance of securities, including any
21 remarketing of municipal securities
22 directly or indirectly by or on behalf
23 of a municipal securities issuer;

1 “(II) the investment of proceeds
2 from securities issued by such munic-
3 ipal securities issuer;

4 “(III) the hedging of any risks
5 associated with subclause (I) or (II),
6 including advice as to swap agree-
7 ments (as defined in section 206A of
8 the Gramm-Leach-Bliley Act regard-
9 less of whether the counterparties
10 constitute eligible contract partici-
11 pants); or

12 “(IV) preparation of disclosure
13 documents in connection with the
14 issuance, proposed issuance, or pre-
15 vious issuance of securities issued by
16 a municipal securities issuer, includ-
17 ing, without limitation, official state-
18 ments and documents prepared in
19 connection with a written agreement
20 or contract for the benefit of holders
21 of such securities described in section
22 240.15c2–12 of title 17, Code of Fed-
23 eral Regulations;

24 “(ii) assisting a municipal securities
25 issuer in selecting or negotiating guaran-

1 teed investment contracts or other invest-
2 ment products; or

3 “(iii) assisting any municipal securi-
4 ties issuer in the primary offering of secu-
5 rities not involving a public offering.

6 “(B) Such term does not include—

7 “(i) an attorney, if the attorney is of-
8 fering advice or providing services that are
9 of a traditional legal nature;

10 “(ii) a nationally recognized statistical
11 rating organization to the extent it is in-
12 volved in the process of developing credit
13 ratings;

14 “(iii) a registered broker-dealer when
15 acting as an underwriter, as such term is
16 defined in section 2(a)(11) of the Securi-
17 ties Act of 1933 (15 U.S.C. 77b(a)(11));

18 “(iv) a State or any political subdivi-
19 sion thereof; or

20 “(v) the independent accountant that
21 audits the financial statements of the mu-
22 nicipal securities issuer.

23 “(79) MUNICIPAL SECURITIES ISSUER.—The
24 term ‘municipal securities issuer’ means—

1 “(A) any entity that has the ability to
2 issue a security the interest on which is exclud-
3 able from gross income under section 103 of the
4 Internal Revenue Code of 1986 and the regula-
5 tions thereunder; or

6 “(B) any person who receives the proceeds
7 generated from the issuance of municipal secu-
8 rities.

9 “(80) PERSON ASSOCIATED WITH A MUNICIPAL
10 FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-
11 NICIPAL FINANCIAL ADVISER.—The term ‘person as-
12 sociated with a municipal financial adviser’ or ‘asso-
13 ciated person of a municipal financial adviser’ means
14 any partner, officer, director, or branch manager of
15 such municipal financial adviser (or any person oc-
16 cupying a similar status or performing similar func-
17 tions), any person directly or indirectly controlling,
18 controlled by, or under common control with such
19 municipal financial adviser, or any employee of such
20 municipal financial adviser, except that any person
21 associated with a municipal financial adviser whose
22 functions are solely clerical or ministerial shall not
23 be included in the meaning of such term for pur-
24 poses of section 15G(b) (other than paragraph (6)
25 thereof).”.

1 **SEC. 7802. CONFORMING AMENDMENTS.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
3 curities Exchange Act of 1934 is amended—

4 (1) in section 15(b)(4)(B)(ii) (15 U.S.C.
5 78o(b)(4)(B)(ii)), by inserting “municipal finance
6 adviser,” after “nationally recognized statistical rat-
7 ing organization,”;

8 (2) in section 15(b)(4)(C) (15 U.S.C.
9 78o(b)(4)(C)), by inserting “municipal finance ad-
10 viser,” after “nationally recognized statistical rating
11 organization,”; and

12 (3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)),
13 by inserting “registered municipal financial adviser,”
14 after “nationally recognized statistical rating organi-
15 zation,”.

16 (b) INVESTMENT COMPANY ACT OF 1940.—The In-
17 vestment Company Act of 1940 is amended—

18 (1) in section 2(a) (15 U.S.C. 80a–2(a)), by in-
19 serting at the end the following new paragraph:

20 “(54) The term ‘municipal finance adviser’ has
21 the same meaning as in section 3 of the Securities
22 Exchange Act of 1934.”;

23 (2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)),
24 by inserting “municipal finance adviser,” after
25 “credit rating agency,”; and

1 (3) in section 9(a)(2) (15 U.S.C. 80a-9(a)(2)),
2 by inserting “municipal finance adviser,” after
3 “credit rating agency,”.

4 (c) INVESTMENT ADVISERS ACT OF 1940.—The In-
5 vestment Advisers Act of 1940 is amended—

6 (1) in section 202(a) (15 U.S.C. 80b-2(a)), by
7 inserting at the end the following new paragraph:

8 “(31) The term ‘municipal finance adviser’ has
9 the same meaning as in section 3 of the Securities
10 Exchange Act of 1934.”;

11 (2) in section 203(e)(2)(B) (15 U.S.C. 80b-
12 3(e)(2)(B)), by inserting “municipal finance ad-
13 viser,” after “credit rating agency,”; and

14 (3) in section 203(e)(4) (15 U.S.C. 80b-
15 3(e)(4)) is amended by inserting “municipal finance
16 adviser,” after “credit rating agency,”.

17 **SEC. 7803. EFFECTIVE DATES.**

18 (a) IN GENERAL.—The amendments made by this
19 part shall take effect 30 days after the date of the enact-
20 ment of this subtitle.

21 (b) EFFECTIVE DATE AND REQUIREMENTS FOR
22 REGULATIONS.—Notwithstanding subsection (a), the Se-
23 curities and Exchange Commission shall, within 120 days
24 after the date of the enactment of this subtitle, publish
25 for notice and public comment such regulations as are ini-

1 tially required to implement this part, and shall take final
 2 action with respect to such regulations not later than 270
 3 days after the date of enactment of this subtitle.

4 (c) REGISTRATION DATE.—No person may continue
 5 to act as a municipal financial adviser, as such term is
 6 defined in section 3(a)(65) of the Securities Exchange Act
 7 of 1934 (as added by this part), after 30 days after the
 8 date the regulations described in subsection (b) become
 9 effective unless such person has been registered as re-
 10 quired by the amendment made by section 7701 of this
 11 part.

12 **TITLE VI—FEDERAL INSURANCE** 13 **OFFICE**

14 **SEC. 8001. SHORT TITLE.**

15 This title may be cited as the “Federal Insurance Of-
 16 fice Act of 2009”.

17 **SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

18 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
 19 chapter 3 of title 31, United States Code, is amended—

20 (1) by transferring and inserting section 312
 21 after section 313;

22 (2) by redesignating sections 313 and 312 (as
 23 so transferred) as sections 312 and 315, respec-
 24 tively; and

1 (3) by inserting after section 312 (as so reded-
2 ignated) the following new sections:

3 **“SEC. 313. FEDERAL INSURANCE OFFICE.**

4 “(a) ESTABLISHMENT OF OFFICE.—There is estab-
5 lished the Federal Insurance Office as an office in the De-
6 partment of the Treasury.

7 “(b) LEADERSHIP.—The Office shall be headed by a
8 Director, who shall be appointed by the Secretary of the
9 Treasury. The position of such Director shall be a career
10 reserved position in the Senior Executive Service.

11 “(c) FUNCTIONS.—

12 “(1) AUTHORITY PURSUANT TO DIRECTION OF
13 SECRETARY.—The Office shall have the authority,
14 pursuant to the direction of the Secretary, as fol-
15 lows:

16 “(A) To monitor the insurance industry to
17 gain expertise.

18 “(B) To identify issues or gaps in the reg-
19 ulation of insurers that could contribute to a
20 systemic crisis in the insurance industry or the
21 United States financial system.

22 “(C) To monitor the extent to which tradi-
23 tionally underserved communities and con-
24 sumers, minorities (as such term is defined in
25 24 section 1204(c) of the Financial Institutions

1 Reform, Recovery, and Enforcement Act of
2 1989 (12 U.S.C. 1811 note)), and low- and
3 moderate-income persons have access to afford-
4 able insurance products regarding all lines of
5 insurance, except health insurance.

6 “(D) To recommend to the Financial Serv-
7 ices Oversight Council that it designate an in-
8 surer, including its affiliates, as an entity sub-
9 ject to stricter standards.

10 “(E) To assist the Secretary in admin-
11 istering the Terrorism Insurance Program es-
12 tablished in the Department of the Treasury
13 under the Terrorism Risk Insurance Act of
14 2002 (15 U.S.C. 6701 note).

15 “(F) To coordinate Federal efforts and de-
16 velop Federal policy on prudential aspects of
17 international insurance matters, including rep-
18 resenting the United States as appropriate in
19 the International Association of Insurance Su-
20 pervisors or any successor organization and as-
21 sisting the Secretary in negotiating covered
22 agreements.

23 “(G) To determine, in accordance with
24 subsection (f), whether State insurance meas-
25 ures are preempted by covered agreements.

1 “(H) To consult with the States regarding
2 insurance matters of national importance and
3 prudential insurance matters of international
4 importance.

5 “(I) To perform such other related duties
6 and authorities as may be assigned to it by the
7 Secretary.

8 “(2) ADVISORY FUNCTIONS.—The Office shall
9 advise the Secretary on major domestic and pruden-
10 tial international insurance policy issues.

11 “(3) ADVISORY CAPACITY ON COUNCIL.—The
12 Director shall serve in an advisory capacity on the
13 Financial Services Oversight Council established
14 under the Financial Stability Improvement Act of
15 2009.

16 “(d) SCOPE.—The authority of the Office shall ex-
17 tend to all lines of insurance except health insurance, as
18 determined by the Secretary in coordination with the Sec-
19 retary of the Department of Health and Human Services
20 based on section 2791 of the Public Health Service Act
21 (42 U.S.C. 300gg–91).

22 “(e) GATHERING OF INFORMATION.—

23 “(1) GENERAL.—In carrying out its functions
24 under subsection (c), the Office may request, receive,
25 and collect data, including financial data, and infor-

1 mation on and from the insurance industry and in-
2 surers, enter into information-sharing agreements,
3 analyze and disseminate data and information, and
4 issue reports regarding all lines of insurance except
5 health insurance.

6 “(2) COLLECTION OF INFORMATION FROM IN-
7 SURERS AND AFFILIATES.—Except as provided in
8 paragraph (3) and subject to paragraph (4), the Of-
9 fice may require an insurer, or affiliate of an in-
10 surer, to submit such data or information that the
11 Office may reasonably require in carrying out its
12 functions under subsection (c). Notwithstanding sub-
13 section (p) and for the purposes of this paragraph
14 only, the term ‘insurer’ means any entity that writes
15 insurance or reinsures risks and issues contracts or
16 policies in one or more States.

17 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
18 graph (2) shall not apply with respect to any insurer
19 or affiliate thereof that meets a minimum size
20 threshold that may be established by the Office by
21 order or rule. Such threshold shall be appropriate to
22 the particular request and need for the data or in-
23 formation.

24 “(4) ADVANCE COORDINATION.—Before col-
25 lecting any data or information under paragraph (2)

1 from an insurer, or affiliate of an insurer, the Office
2 shall coordinate with each relevant Federal agency
3 and State insurance regulator (or other relevant
4 Federal or State regulatory agency, if any, in the
5 case of an affiliate of an insurer) and any publicly
6 available sources to determine if the information to
7 be collected is available from, or may be obtained in
8 a timely manner by, such Federal agency or State
9 insurance regulator, individually or collectively, other
10 regulatory agency, or publicly available sources. If
11 the Director determines that such data or informa-
12 tion is available, or may be obtained in a timely
13 manner, from such an agency, regulator, regulatory
14 agency, or source, the Director shall obtain the data
15 or information from such agency, regulator, regu-
16 latory agency, or source. If the Director determines
17 that such data or information is not so available, the
18 Director may collect such data or information from
19 an insurer (or affiliate) only if the Director complies
20 with the requirements of subchapter I of chapter 35
21 of title 44, United States Code (relating to Federal
22 information policy; commonly known as the Paper-
23 work Reduction Act) in collecting such data or infor-
24 mation. Notwithstanding any other provision of law,
25 each such relevant Federal agency and State insur-

1 ance regulator or other Federal or State regulatory
2 agency is authorized to provide to the Office such
3 data or information.

4 “(5) CONFIDENTIALITY.—

5 “(A) The submission of any non-publicly
6 available data and information to the Office
7 under this subsection shall not constitute a
8 waiver of, or otherwise affect, any privilege arising
9 under Federal or State law (including the
10 rules of any Federal or State Court) to which
11 the data or information is otherwise subject.

12 “(B) Any requirement under Federal or
13 State law to the extent otherwise applicable, or
14 any requirement pursuant to a written agree-
15 ment in effect between the original source of
16 any non-publicly available data or information
17 and the source of such data or information to
18 the Office, regarding the privacy or confiden-
19 tiality of any data or information in the posses-
20 sion of the source to the Office, shall continue
21 to apply to such data or information after the
22 data or information has been provided pursuant
23 to this subsection to the Office.

24 “(C) Any data or information obtained by
25 the Office may be made available to State in-

1 surance regulators individually or collectively
2 through an information sharing agreement that
3 shall comply with applicable Federal law and
4 that shall not constitute a waiver of, or other-
5 wise affect, any privilege under Federal or
6 State law (including the rules of any Federal or
7 State Court) to which the data or information
8 is otherwise subject.

9 “(D) Section 552 of title 5, United States
10 Code, shall apply to any data or information
11 submitted by an insurer or affiliate of an in-
12 surer.

13 “(f) PREEMPTION OF STATE INSURANCE MEAS-
14 URES.—

15 “(1) STANDARD.—A State insurance measure
16 shall be preempted pursuant to this section or sec-
17 tion 314 if, and only to the extent that the Director
18 determines, in accordance with this subsection, that
19 the measure—

20 “(A) directly results in less favorable treat-
21 ment of a non-United States insurer domiciled
22 in a foreign jurisdiction that is subject to a cov-
23 ered agreement than a United States insurer
24 domiciled, licensed, admitted, or otherwise au-
25 thorized in that State; and

1 “(B) is inconsistent with a covered agree-
2 ment that is entered into on a date after the
3 date of the enactment of this Act.

4 “(2) DETERMINATION.—

5 “(A) NOTICE OF POTENTIAL INCONSIST-
6 ENCY.—Before making any determination of in-
7 consistency, the Director shall—

8 “(i) notify and consult with the appro-
9 priate State regarding any potential incon-
10 sistency or preemption;

11 “(ii) notify and consult with the
12 United States Trade Representative re-
13 garding any potential inconsistency or pre-
14 emptation;

15 “(iii) cause to be published in the
16 Federal Register notice of the issue re-
17 garding the potential inconsistency or pre-
18 emptation, including a description of each
19 State insurance measure at issue and any
20 applicable covered agreement;

21 “(iv) provide interested parties a rea-
22 sonable opportunity to submit written com-
23 ments to the Office;

24 “(v) consider the effect of preemption
25 on—

1 “(I) the protection of policy-
2 holders and policy claimants;

3 “(II) the maintenance of the
4 safety, soundness, integrity, and fi-
5 nancial responsibility of any entity in-
6 volved in the business of insurance or
7 insurance operations;

8 “(III) ensuring the integrity and
9 stability of the United States financial
10 system; and

11 “(IV) the creation of a gap or
12 void in financial or market conduct
13 regulation of any entity involved in
14 the business of insurance or insurance
15 operations in the United States; and

16 “(vi) consider any comments received.

17 The Director shall provide the notifications re-
18 quired under clauses (i), (ii), and (iii) contem-
19 poraneously.

20 “(B) SCOPE OF REVIEW.—For purposes of
21 this section, the Director’s determination of
22 State insurance measures shall be limited to the
23 subject matter of the prudential measures ap-
24 plicable to the business of insurance contained
25 within the covered agreement involved.

1 “(C) NOTICE OF DETERMINATION OF IN-
2 CONSISTENCY.—Upon making any determina-
3 tion of inconsistency, the Director shall—

4 “(i) notify the appropriate State of
5 the determination and the extent of the in-
6 consistency;

7 “(ii) establish a reasonable period of
8 time, which shall not be shorter than 90
9 days, before the determination shall be-
10 come effective; and

11 “(iii) notify the Committee on Finan-
12 cial Services of the House of Representa-
13 tives and the Committee on Banking,
14 Housing, and Urban Affairs of the Senate
15 of the inconsistency.

16 “(3) NOTICE OF EFFECTIVENESS.—Upon the
17 conclusion of the period referred to in paragraph
18 (2)(C)(ii), if the basis for the determination of in-
19 consistency still exists, the determination shall be-
20 come effective and the Director shall—

21 “(A) cause to be published notice in the
22 Federal Register that the preemption has be-
23 come effective, as well as the effective date; and

24 “(B) notify the appropriate State.

1 “(4) LIMITATION.—No State may enforce a
2 State insurance measure to the extent that it has
3 been preempted under this subsection.

4 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
5 DURE ACT.—Determinations of inconsistency pursuant to
6 subsection (f)(2) shall be subject to the applicable provi-
7 sions of subchapter II of chapter 5 of title 5, United
8 States Code (relating to administrative procedure), and
9 chapter 7 of such title (relating to judicial review), except
10 that in any action for judicial review of a determination
11 of inconsistency, the court shall determine the matter de
12 novo.

13 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
14 The Secretary may issue orders, regulations, policies and
15 procedures to implement this section.

16 “(i) CONSULTATION.—The Director shall consult
17 with State insurance regulators, individually and collec-
18 tively, to the extent the Director determines appropriate,
19 in carrying out the functions of the Office.

20 “(j) SAVINGS PROVISIONS.—Nothing in this section
21 shall—

22 “(1) preempt any State insurance measure that
23 governs any insurer’s rates, premiums, underwriting
24 or sales practices, or State coverage requirements

1 for insurance, or to the application of the antitrust
2 laws of any State to the business of insurance;

3 “(2) preempt any State insurance measure gov-
4 erning the capital or solvency of an insurer, except
5 to the extent that such State insurance measure di-
6 rectly results in less favorable treatment of a non-
7 United States insurer than a United States insurer;

8 “(3) be construed to alter, amend, or limit the
9 responsibility of the Consumer Financial Protection
10 Agency;

11 “(4) preempt any State insurance measure be-
12 cause of inconsistency with any agreement that is
13 not a covered agreement (as such term is defined in
14 subsection (p)); or

15 “(5) affect the preemption of any State insur-
16 ance measure otherwise inconsistent with and pre-
17 empted by Federal law.

18 “(k) RETENTION OF EXISTING STATE REGULATORY
19 AUTHORITY.—Nothing in this section or section 314 shall
20 be construed to establish a general supervisory or regu-
21 latory authority of the Office or the Department of the
22 Treasury over the business of insurance.

23 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
24 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
25 tion or section 314 shall be construed to limit the author-

1 ity of any Federal financial regulatory agency, including
2 the authority to develop and coordinate policy, negotiate,
3 and enter into agreements with foreign governments, au-
4 thorities, regulators, and multi-national regulatory com-
5 mittees and to preempt State measures to affect uni-
6 formity with international regulatory agreements.

7 “(m) RETENTION OF AUTHORITY OF UNITED
8 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
9 tion or section 314 shall be construed to affect the author-
10 ity of the Office of the United States Trade Representative
11 pursuant to section 141 of the Trade Act of 1974 (19
12 U.S.C. 2171) or any other provision of law, including au-
13 thority over the development and coordination of United
14 States international trade policy and the administration
15 of the United States trade agreements program.

16 “(n) REPORTS TO CONGRESS.—

17 “(1) ANNUAL REPORT.—Beginning September
18 30, 2011, the Director shall submit a report on or
19 before September 30 of each calendar year to the
20 President and to the Committees on Financial Serv-
21 ices and Ways and Means of the House of Rep-
22 resentatives and the Committees on Banking, Hous-
23 ing, and Urban Affairs and Finance of the Senate
24 on the insurance industry, any actions taken by the

1 office pursuant to subsection (f) (regarding preemp-
2 tion of inconsistent State insurance measures).

3 “(2) OTHER REPORTS.—The Director shall sub-
4 mit to the President and the Committees referred to
5 in paragraph (1) any other information or reports as
6 deemed relevant by the Director or as requested by
7 the Chairman or Ranking Member of any of such
8 Committees.

9 “(o) USE OF EXISTING RESOURCES.—To carry out
10 this section, the Office may employ personnel, facilities,
11 and other Department of the Treasury resources available
12 to the Secretary and the Secretary shall dedicate specific
13 personnel to the Office.

14 “(p) DEFINITIONS.—For purposes of this section and
15 section 314, the following definitions shall apply:

16 “(1) AFFILIATE.—The term ‘affiliate’ means,
17 with respect to an insurer, any person that controls,
18 is controlled by, or is under common control with the
19 insurer.

20 “(2) COVERED AGREEMENT.—The term ‘cov-
21 ered agreement’ means a written bilateral or multi-
22 lateral recognition agreement that—

23 “(A) is entered into between the United
24 States and one or more foreign governments,
25 authorities, or regulatory entities; and

1 “(B) provides for recognition of prudential
2 measures with respect to the business of insur-
3 ance or reinsurance that achieves a level of pro-
4 tection for insurance or reinsurance consumers
5 that is substantially equivalent to the level of
6 protection achieved under State insurance or re-
7 insurance regulation.

8 “(3) DETERMINATION OF INCONSISTENCY.—
9 The term ‘determination of inconsistency’ means a
10 determination that a State insurance measure is pre-
11 empted under subsection (f).

12 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
13 CY.—The term ‘Federal financial regulatory agency’
14 means the Department of the Treasury, the Board
15 of Governors of the Federal Reserve System, the Of-
16 fice of the Comptroller of the Currency, the Office
17 of Thrift Supervision, the Securities and Exchange
18 Commission, the Commodity Futures Trading Com-
19 mission, the Federal Deposit Insurance Corporation,
20 the Federal Housing Finance Agency, or the Na-
21 tional Credit Union Administration.

22 “(5) INSURER.—The term ‘insurer’ means any
23 person engaged in the business of insurance, includ-
24 ing reinsurance.

1 “(6) NON-UNITED STATES INSURER.—The term
2 ‘non-United States insurer’ means an insurer that is
3 organized under the laws of a jurisdiction other than
4 a State, but does not include any United States
5 branch of such an insurer.

6 “(7) OFFICE.—The term ‘Office’ means the
7 Federal Insurance Office established by this section.

8 “(8) SECRETARY.—The term ‘Secretary’ means
9 the Secretary of the Treasury.

10 “(9) STATE.—The term ‘State’ means any
11 State, commonwealth, territory, or possession of the
12 United States, the District of Columbia, the Com-
13 monwealth of Puerto Rico, the Commonwealth of the
14 Northern Mariana Islands, American Samoa, Guam,
15 or the United States Virgin Islands.

16 “(10) STATE INSURANCE MEASURE.—The term
17 ‘State insurance measure’ means any State law, reg-
18 ulation, administrative ruling, bulletin, guideline, or
19 practice relating to or affecting prudential measures
20 applicable to insurance or reinsurance.

21 “(11) STATE INSURANCE REGULATOR.—The
22 term ‘State insurance regulator’ means any State
23 regulatory authority responsible for the supervision
24 of insurers.

1 “(12) UNITED STATES INSURER.—The term
2 ‘United States insurer’ means—

3 “(A) an insurer that is organized under
4 the laws of a State; or

5 “(B) a United States branch of a non-
6 United States insurer.

7 “(q) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated for the Office such sums
9 as may be necessary for each fiscal year.

10 **“SEC. 314. COVERED AGREEMENTS.**

11 “(a) AUTHORITY.—The Secretary and the United
12 States Trade Representative are authorized, jointly, to ne-
13 gotiate and enter into covered agreements on behalf of the
14 United States.

15 “(b) REQUIREMENTS FOR CONSULTATION WITH
16 CONGRESS.—

17 “(1) IN GENERAL.—Before initiating negotia-
18 tions to enter into a covered agreement under sub-
19 section (a), during such negotiations, and before en-
20 tering into any such agreement, the Secretary and
21 the United States Trade Representative shall jointly
22 consult with the Committee on Financial Services
23 and the Committee on Ways and Means of the
24 House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs and the Com-
2 mittee on Finance of the Senate.

3 “(2) SCOPE.—The consultation described in
4 paragraph (1) shall include consultation with respect
5 to—

6 “(A) the nature of the agreement;

7 “(B) how and to what extent the agree-
8 ment will achieve the applicable purposes, poli-
9 cies, priorities, and objectives of section 313
10 and this section; and

11 “(C) the implementation of the agreement,
12 including the general effect of the agreement on
13 existing State laws.

14 “(c) SUBMISSION AND LAYOVER PROVISIONS.—A
15 covered agreement under subsection (a) may enter into
16 force with respect to the United States only if—

17 “(1) the Secretary and the United States Trade
18 Representative jointly submit to the congressional
19 committees specified in subsection (b)(1), on a day
20 on which both Houses of Congress are in session, a
21 copy of the final legal text of the agreement; and

22 “(2) a period of 90 calendar days beginning on
23 the date on which the copy of the final legal text of
24 the agreement is submitted to the congressional
25 committees under paragraph (1) has expired.”.

1 (b) DUTIES OF SECRETARY.—Section 321(a) of title
2 31, United States Code, is amended—

3 (1) in paragraph (7), by striking “and” at the
4 end;

5 (2) in paragraph (8)(C), by striking the period
6 at the end and inserting “; and”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(9) advise the President on major domestic
10 and international prudential policy issues in connec-
11 tion with all lines of insurance except health insur-
12 ance.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subchapter I of chapter 3 of title 31, United States
15 Code, is amended by striking the item relating to section
16 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. Covered agreements.

“Sec. 315. Continuing in office.”.

17 **SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**

18 Not later than September 30, 2011, the Director of
19 the Federal Insurance Office appointed under section
20 313(b) of title 31, United States Code (as amended by
21 section 8002(a)(3) of this title) shall submit to the Com-
22 mittee on Financial Services of the House of Representa-
23 tives and the Committee on Banking, Housing, and Urban

1 Affairs of the Senate a report describing the breadth and
2 scope of the global reinsurance market and the critical role
3 such market plays in supporting insurance in the United
4 States.

5 **SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT**
6 **OF INSURANCE REGULATION IN THE UNITED**
7 **STATES.**

8 (a) STUDY.—The Director of the Federal Insurance
9 Office appointed under section 313(b) of title 31, United
10 States Code (as amended by section 8002(a)(3) of this
11 title) shall conduct a study on how to modernize and im-
12 prove the system of insurance regulation in the United
13 States. Such study shall include consideration of the fol-
14 lowing:

15 (1) Effective systemic risk regulation with re-
16 spect to insurance.

17 (2) Strong capital standards and an appro-
18 priate match between capital allocation and liabil-
19 ities for all risk.

20 (3) Meaningful and consistent consumer protec-
21 tion for insurance products and practices.

22 (4) Increased national uniformity through ei-
23 ther a Federal charter or effective action by the
24 States.

1 (5) Improved regulation of insurance companies
2 and affiliates on a consolidated basis, including af-
3 filiates outside of the traditional insurance business.

4 (6) International coordination.

5 (7) Geographic disparities in access to and cost
6 of insurance products.

7 (b) REPORT.—Not later than 1 year after the date
8 of the enactment of this Act, the Director shall submit
9 to the Committee on Financial Services of the House of
10 Representatives and the Committee on Banking, Housing,
11 and Urban Affairs of the Senate a report containing—

12 (1) the results of the study conducted under
13 subsection (a); and

14 (2) any Federal or State legislative, administra-
15 tive, or regulatory recommendations that the Direc-
16 tor considers appropriate with respect to such study
17 to modernize and improve the system of insurance
18 regulation in the United States.

19 (c) CONSULTATION.—In carrying out subsections (a)
20 and (b), the Director shall consult with State insurance
21 commissioners, consumer organizations, representatives of
22 the insurance industry, policyholders, and other persons,
23 as the Director considers appropriate.

1 **SEC. 8005. SENSE OF CONGRESS REGARDING SIMPLIFIED**
2 **MORTGAGE CONTRACT SUMMARIES.**

3 It is the sense of Congress that mortgage lenders
4 should provide loan applicants with a simplified summary
5 of their loan contracts, including an easy-to-read list of
6 the basic loan terms, payment information, the existence
7 of prepayment penalties or balloon payments, and escrow
8 information.

9 **TITLE VII—MORTGAGE REFORM**
10 **AND ANTI-PREDATORY LEND-**
11 **ING ACT**

12 **SEC. 9000. SHORT TITLE; DESIGNATION AS ENUMERATED**
13 **CONSUMER LAW.**

14 (a) **SHORT TITLE.**—This title may be cited as the
15 “Mortgage Reform and Anti-Predatory Lending Act”.

16 (b) **DESIGNATION AS ENUMERATED CONSUMER LAW**
17 **UNDER THE PURVIEW OF THE CONSUMER FINANCIAL**
18 **PROTECTION AGENCY.**—Subtitles A, B, C, and E and sec-
19 tions 9501, 9502, and 9506, and the amendments made
20 by such subtitles and sections, shall be enumerated con-
21 sumer laws, as defined in section 4002(16), and come
22 under the purview of the Consumer Financial Protection
23 Agency for purposes of title IV, including the transfer of
24 functions and personnel under subtitle F of title IV and
25 the savings provisions of such subtitle.

1 **Subtitle A—Residential Mortgage**
2 **Loan Origination Standards**

3 **SEC. 9001. DEFINITIONS.**

4 Section 103 of the Truth in Lending Act (15 U.S.C.
5 1602) is amended by adding at the end the following new
6 subsection:

7 “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-
8 NATION AND RESIDENTIAL MORTGAGE LOANS.—

9 “(1) COMMISSION.—Unless otherwise specified,
10 the term ‘Commission’ means the Federal Trade
11 Commission.

12 “(2) FEDERAL BANKING AGENCIES.—The term
13 ‘Federal banking agencies’ means the Board of Gov-
14 ernors of the Federal Reserve System, the Comp-
15 troller of the Currency, the Director of the Office of
16 Thrift Supervision, the Federal Deposit Insurance
17 Corporation, and the National Credit Union Admin-
18 istration Board. All rule writing by the ‘Federal
19 banking agencies’ as designated by the Mortgage
20 Reform and Anti-Predatory Lending Act will be co-
21 ordinated through the Financial Institutions Exam-
22 ination Council in consultation with the Chairman of
23 the State Liaison Committee.

24 “(3) MORTGAGE ORIGINATOR.—The term
25 ‘mortgage originator’—

1 “(A) means any person who, for direct or
2 indirect compensation or gain, or in the expect-
3 ation of direct or indirect compensation or
4 gain—

5 “(i) takes a residential mortgage loan
6 application;

7 “(ii) assists a consumer in obtaining
8 or applying to obtain a residential mort-
9 gage loan; or

10 “(iii) offers or negotiates terms of a
11 residential mortgage loan;

12 “(B) includes any person who represents
13 to the public, through advertising or other
14 means of communicating or providing informa-
15 tion (including the use of business cards, sta-
16 tionery, brochures, signs, rate lists, or other
17 promotional items), that such person can or will
18 provide any of the services or perform any of
19 the activities described in subparagraph (A);

20 “(C) does not include any person who is (i)
21 not otherwise described in subparagraph (A) or
22 (B) and who performs purely administrative or
23 clerical tasks on behalf of a person who is de-
24 scribed in any such subparagraph, or (ii) an
25 employee of a retailer of manufactured homes

1 who is not described in clause (i) or (iii) of sub-
2 paragraph (A) and who does not advise a con-
3 sumer on loan terms (including rates, fees, and
4 other costs);

5 “(D) does not include a person or entity
6 that only performs real estate brokerage activi-
7 ties and is licensed or registered in accordance
8 with applicable State law, unless such person or
9 entity is compensated for performing such bro-
10 kerage activities by a lender, a mortgage
11 broker, or other mortgage originator or by any
12 agent of such lender, mortgage broker, or other
13 mortgage originator;

14 “(E) does not include, with respect to a
15 residential mortgage loan, a person, estate, or
16 trust that provides mortgage financing for the
17 sale of 1 property in any 36-month period, pro-
18 vided that such loan—

19 “(i) is fully amortizing;

20 “(ii) is with respect to a sale for
21 which the seller determines in good faith
22 and documents that the buyer has a rea-
23 sonable ability to repay the loan;

24 “(iii) has a fixed rate or an adjustable
25 rate that is adjustable after 5 or more

1 years, subject to reasonable annual and
2 lifetime limitations on interest rate in-
3 creases; and

4 “(iv) meets any other criteria the
5 Federal banking agencies may prescribe;
6 and

7 “(F) does not include a servicer or servicer
8 employees, agents and contractors, including
9 but not limited to those who offer or negotiate
10 terms of a residential mortgage loan for pur-
11 poses of renegotiating, modifying, replacing and
12 subordinating principal of existing mortgages
13 where borrowers are behind in their payments,
14 in default or have a reasonable likelihood of
15 being in default or falling behind.

16 “(4) NATIONWIDE MORTGAGE LICENSING SYS-
17 TEM AND REGISTRY.—The term ‘Nationwide Mort-
18 gage Licensing System and Registry’ has the same
19 meaning as in the Secure and Fair Enforcement for
20 Mortgage Licensing Act of 2008.

21 “(5) OTHER DEFINITIONS RELATING TO MORT-
22 GAGE ORIGINATOR.—For purposes of this sub-
23 section, a person ‘assists a consumer in obtaining or
24 applying to obtain a residential mortgage loan’ by,
25 among other things, advising on residential mort-

1 gage loan terms (including rates, fees, and other
2 costs), preparing residential mortgage loan packages,
3 or collecting information on behalf of the consumer
4 with regard to a residential mortgage loan.

5 “(6) RESIDENTIAL MORTGAGE LOAN.—The
6 term ‘residential mortgage loan’ means any con-
7 sumer credit transaction that is secured by a mort-
8 gage, deed of trust, or other equivalent consensual
9 security interest on a dwelling or on residential real
10 property that includes a dwelling, other than a con-
11 sumer credit transaction under an open end credit
12 plan or, for purposes of sections 129B and 129C
13 and section 128(a) (16), (17), and (18), and 128(f)
14 and any regulations promulgated thereunder, an ex-
15 tension of credit relating to a plan described in sec-
16 tion 101(53D) of title 11, United States Code.

17 “(7) SECRETARY.—The term ‘Secretary’, when
18 used in connection with any transaction or person
19 involved with a residential mortgage loan, means the
20 Secretary of Housing and Urban Development.

21 “(8) SECURITIZATION VEHICLE.—The term
22 ‘securitization vehicle’ means a trust, corporation,
23 partnership, limited liability entity, special purpose
24 entity, or other structure that—

1 “(A) is the issuer, or is created by the
2 issuer, of mortgage pass-through certificates,
3 participation certificates, mortgage-backed secu-
4 rities, or other similar securities backed by a
5 pool of assets that includes residential mortgage
6 loans; and

7 “(B) holds such loans.

8 “(9) SECURITIZER.—The term ‘securitizer’
9 means the person that transfers, conveys, or assigns,
10 or causes the transfer, conveyance, or assignment of,
11 residential mortgage loans, including through a spe-
12 cial purpose vehicle, to any securitization vehicle, ex-
13 cluding any trustee that holds such loans solely for
14 the benefit of the securitization vehicle.

15 “(10) SERVICER.—The term ‘servicer’ has the
16 same meaning as in section 6(i)(2) of the Real Es-
17 tate Settlement Procedures Act of 1974.”.

18 **SEC. 9002. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

19 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
20 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
21 after section 129A the following new section:

22 **“§ 129B. Residential mortgage loan origination**

23 “(a) FINDING AND PURPOSE.—

24 “(1) FINDING.—The Congress finds that eco-
25 nomic stabilization would be enhanced by the protec-

1 tion, limitation, and regulation of the terms of resi-
2 dential mortgage credit and the practices related to
3 such credit, while ensuring that responsible, afford-
4 able mortgage credit remains available to consumers.

5 “(2) PURPOSE.—It is the purpose of this sec-
6 tion and section 129C to assure that consumers are
7 offered and receive residential mortgage loans on
8 terms that reasonably reflect their ability to repay
9 the loans and that are understandable and not un-
10 fair, deceptive or abusive.

11 “(b) DUTY OF CARE.—

12 “(1) STANDARD.—Subject to regulations pre-
13 scribed under this subsection, each mortgage origi-
14 nator shall, in addition to the duties imposed by oth-
15 erwise applicable provisions of State or Federal
16 law—

17 “(A) be qualified and, when required, reg-
18 istered and licensed as a mortgage originator in
19 accordance with applicable State or Federal
20 law, including the Secure and Fair Enforcement
21 for Mortgage Licensing Act of 2008;

22 “(B) with respect to each consumer seek-
23 ing or inquiring about a residential mortgage
24 loan, diligently work to present the consumer
25 with a range of residential mortgage loan prod-

1 ucts for which the consumer likely qualifies and
2 which are appropriate to the consumer’s exist-
3 ing circumstances, based on information known
4 by, or obtained in good faith by, the originator;

5 “(C) make full, complete, and timely dis-
6 closure to each such consumer in writing, the
7 receipt and understanding of which shall be ac-
8 knowledgeed by the signature of the mortgage
9 originator and the consumer, of—

10 “(i) the comparative costs and bene-
11 fits of each residential mortgage loan prod-
12 uct offered, discussed, or referred to by the
13 originator (and such comparative costs and
14 benefits for each such product shall be pre-
15 sented side by side and the disclosures for
16 each such product shall have equal promi-
17 nence);

18 “(ii) the nature of the originator’s re-
19 lationship to the consumer (including the
20 cost of the services to be provided by the
21 originator and a statement that the mort-
22 gage originator is or is not acting as an
23 agent for the consumer, as the case may
24 be); and

1 “(iii) any relevant conflicts of interest
2 between the originator and the consumer;

3 “(D) certify to the creditor, with respect to
4 any transaction involving a residential mortgage
5 loan, that the mortgage originator has fulfilled
6 all requirements applicable to the originator
7 under this section with respect to the trans-
8 action; and

9 “(E) include on all loan documents any
10 unique identifier of the mortgage originator
11 provided by the Nationwide Mortgage Licensing
12 System and Registry.

13 “(2) CLARIFICATION OF EXTENT OF DUTY TO
14 PRESENT RANGE OF PRODUCTS AND APPROPRIATE
15 PRODUCTS.—

16 “(A) NO DUTY TO OFFER PRODUCTS FOR
17 WHICH ORIGINATOR IS NOT AUTHORIZED TO
18 TAKE AN APPLICATION.—Paragraph (1)(B)
19 shall not be construed as requiring—

20 “(i) a mortgage originator to present
21 to any consumer any specific residential
22 mortgage loan product that is offered by a
23 creditor which does not accept consumer
24 referrals from, or consumer applications

1 submitted by or through, such originator;
2 or

3 “(ii) a creditor to offer products that
4 the creditor does not offer to the general
5 public.

6 “(B) APPROPRIATE LOAN PRODUCT.—For
7 purposes of paragraph (1)(B), a residential
8 mortgage loan shall be presumed to be appro-
9 priate for a consumer if—

10 “(i) the mortgage originator deter-
11 mines in good faith, based on then existing
12 information and without undergoing a full
13 underwriting process, that the consumer
14 has a reasonable ability to repay and, in
15 the case of a refinancing of an existing res-
16 idential mortgage loan, receives a net tan-
17 gible benefit, as determined in accordance
18 with regulations prescribed under sub-
19 sections (a) and (b) of section 129C; and

20 “(ii) the loan does not have predatory
21 characteristics or effects (such as equity
22 stripping and excessive fees and abusive
23 terms) as determined in accordance with
24 regulations prescribed under paragraph
25 (4).

1 “(3) RULES OF CONSTRUCTION.—No provision
2 of this subsection shall be construed as—

3 “(A) creating an agency or fiduciary rela-
4 tionship between a mortgage originator and a
5 consumer if the originator does not hold himself
6 or herself out as such an agent or fiduciary; or

7 “(B) restricting a mortgage originator
8 from holding himself or herself out as an agent
9 or fiduciary of a consumer subject to any addi-
10 tional duty, requirement, or limitation applica-
11 ble to agents or fiduciaries under any Federal
12 or State law.

13 “(4) REGULATIONS.—

14 “(A) IN GENERAL.—The Federal banking
15 agencies, in consultation with the Secretary,
16 and the Commission, shall jointly prescribe reg-
17 ulations to—

18 “(i) further define the duty estab-
19 lished under paragraph (1);

20 “(ii) implement the requirements of
21 this subsection;

22 “(iii) establish the time period within
23 which any disclosure required under para-
24 graph (1) shall be made to the consumer;
25 and

1 “(iv) establish such other require-
2 ments for any mortgage originator as such
3 regulatory agencies may determine to be
4 appropriate to meet the purposes of this
5 subsection.

6 “(B) COMPLEMENTARY AND NONDUPLICA-
7 TIVE DISCLOSURES.—The agencies referred to
8 in subparagraph (A) shall endeavor to make the
9 required disclosures to consumers under this
10 subsection complementary and nonduplicative
11 with other disclosures for mortgage consumers
12 to the extent such efforts—

13 “(i) are practicable; and

14 “(ii) do not reduce the value of any
15 such disclosure to recipients of such disclo-
16 sures.

17 “(5) COMPLIANCE PROCEDURES REQUIRED.—
18 The Federal banking agencies shall prescribe regula-
19 tions requiring depository institutions to establish
20 and maintain procedures reasonably designed to as-
21 sure and monitor the compliance of such depository
22 institutions, the subsidiaries of such institutions,
23 and the employees of such institutions or subsidi-
24 aries with the requirements of this section and the
25 registration procedures established under section

1 1507 of the Secure and Fair Enforcement for Mort-
 2 gage Licensing Act of 2008.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 for chapter 2 of the Truth in Lending Act is amended
 5 by inserting after the item relating to section 129 the fol-
 6 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.

“129B. Residential mortgage loan origination.”.

7 **SEC. 9003. PROHIBITION ON STEERING INCENTIVES.**

8 Section 129B of the Truth in Lending Act (as added
 9 by section 102(a)) is amended by inserting after sub-
 10 section (b) the following new subsection:

11 “(c) PROHIBITION ON STEERING INCENTIVES.—

12 “(1) IN GENERAL.—For any mortgage loan, the
 13 total amount of direct and indirect compensation
 14 from all sources permitted to a mortgage originator
 15 may not vary based on the terms of the loan (other
 16 than the amount of the principal).

17 “(2) RESTRUCTURING OF FINANCING ORIGINA-
 18 TION FEE.—

19 “(A) IN GENERAL.—For any mortgage
 20 loan, a mortgage originator may not arrange
 21 for a consumer to finance through rate any
 22 origination fee or cost except bona fide third
 23 party settlement charges not retained by the
 24 creditor or mortgage originator.

1 “(B) EXCEPTION.—Notwithstanding para-
2 graph subparagraph (A), a mortgage originator
3 may arrange for a consumer to finance through
4 rate an origination fee or cost if—

5 “(i) the mortgage originator does not
6 receive any other compensation from the
7 consumer except the compensation that is
8 financed through rate; and

9 “(ii) the mortgage is a qualified mort-
10 gage.

11 “(3) REGULATIONS.—The Federal banking
12 agencies, in consultation with the Secretary and the
13 Commission, shall jointly prescribe regulations to
14 prohibit—

15 “(A) mortgage originators from steering
16 any consumer to a residential mortgage loan
17 that—

18 “(i) the consumer lacks a reasonable
19 ability to repay (in accordance with regula-
20 tions prescribed under section 129C(a));

21 “(ii) in the case of a refinancing of a
22 residential mortgage loan, does not provide
23 the consumer with a net tangible benefit
24 (in accordance with regulations prescribed
25 under section 129C(b)); or

1 “(iii) has predatory characteristics or
2 effects (such as equity stripping, excessive
3 fees, or abusive terms);

4 “(B) mortgage originators from steering
5 any consumer from a residential mortgage loan
6 for which the consumer is qualified that is a
7 qualified mortgage (as defined in section
8 129C(e)(3)) to a residential mortgage loan that
9 is not a qualified mortgage;

10 “(C) abusive or unfair lending practices
11 that promote disparities among consumers of
12 equal credit worthiness but of different race,
13 ethnicity, gender, or age;

14 “(D) mortgage originators from assessing
15 excessive points and fees (as such term is de-
16 scribed under section 103(aa)(4) of the Truth
17 in Lending Act (15 U.S.C. 1602(aa)(4))) to a
18 consumer for the origination of a residential
19 mortgage loan based on such consumer’s deci-
20 sion to finance all or part of the payment
21 through the rate for such points and fees; and

22 “(E) mortgage originators from—

23 “(i) mischaracterizing the credit his-
24 tory of a consumer or the residential mort-
25 gage loans available to a consumer;

1 “(ii) mischaracterizing or suborning
2 the mischaracterization of the appraised
3 value of the property securing the exten-
4 sion of credit; or

5 “(iii) if unable to suggest, offer, or
6 recommend to a consumer a loan that is
7 not more expensive than a loan for which
8 the consumer qualifies, discouraging a con-
9 sumer from seeking a home mortgage loan
10 secured by a consumer’s principal dwelling
11 from another mortgage originator.

12 “(4) RULES OF CONSTRUCTION.—No provision
13 of this subsection shall be construed as—

14 “(A) permitting any yield spread premium
15 or other similar compensation that would, for
16 any mortgage loan, permit the total amount of
17 direct and indirect compensation from all
18 sources permitted to a mortgage originator to
19 vary based on the terms of the loan (other than
20 the amount of the principal);

21 “(B) affecting the mechanism for pro-
22 viding the total amount of direct and indirect
23 compensation permitted to a mortgage origi-
24 nator;

1 “(C) limiting or affecting the amount of
2 compensation received by a creditor upon the
3 sale of a consummated loan to a subsequent
4 purchaser;

5 “(D) restricting a consumer’s ability to fi-
6 nance, at the option of the consumer, including
7 through principal or rate, any origination fees
8 or costs permitted under this subsection, or the
9 mortgage originator’s ability to receive such
10 fees or costs (including compensation) from any
11 person, so long as such fees or costs were lim-
12 ited by agreement with the consumer and were
13 fully and clearly disclosed to the consumer ear-
14 lier in the application process as required by
15 129B(b)(1)(C)(i) and do not vary based on the
16 terms of the loan (other than the amount of the
17 principal) or the consumer’s decision about
18 whether to finance such fees or costs; or

19 “(E) prohibiting incentive payments to a
20 mortgage originator based on the number of
21 residential mortgage loans originated within a
22 specified period of time.”.

1 **SEC. 9004. LIABILITY.**

2 Section 129B of the Truth in Lending Act is amend-
3 ed by inserting after subsection (c) (as added by section
4 103) the following new subsection:

5 “(d) LIABILITY FOR VIOLATIONS.—

6 “(1) IN GENERAL.—For purposes of providing
7 a cause of action for any failure by a mortgage origi-
8 nator to comply with any requirement imposed
9 under this section and any regulation prescribed
10 under this section, subsections (a) and (b) of section
11 130 shall be applied with respect to any such failure
12 by substituting ‘mortgage originator’ for ‘creditor’
13 each place such term appears in each such sub-
14 section.

15 “(2) MAXIMUM.—The maximum amount of any
16 liability of a mortgage originator under paragraph
17 (1) to a consumer for any violation of this section
18 shall not exceed the greater of actual damages or an
19 amount equal to 3 times the total amount of direct
20 and indirect compensation or gain accruing to the
21 mortgage originator in connection with the residen-
22 tial mortgage loan involved in the violation, plus the
23 costs to the consumer of the action, including a rea-
24 sonable attorney’s fee.”.

1 **SEC. 9005. REGULATIONS.**

2 (a) DISCRETIONARY REGULATORY AUTHORITY.—

3 Section 129B of the Truth in Lending Act is amended
4 by inserting after subsection (d) (as added by section 104)
5 the following new subsection:

6 “(e) DISCRETIONARY REGULATORY AUTHORITY.—

7 “(1) IN GENERAL.—The Federal banking agen-
8 cies shall, by regulations issued jointly, prohibit or
9 condition terms, acts or practices relating to residen-
10 tial mortgage loans that the agencies find to be abu-
11 sive, unfair, deceptive, predatory, inconsistent with
12 reasonable underwriting standards, necessary or
13 proper to ensure that responsible, affordable mort-
14 gage credit remains available to consumers in a
15 manner consistent with the purposes of this section
16 and section 129B, necessary or proper to effectuate
17 the purposes of this section and section 129C, to
18 prevent circumvention or evasion thereof, or to facili-
19 tate compliance with such sections, or are not in the
20 interest of the borrower.

21 “(2) APPLICATION.—The regulations prescribed
22 under paragraph (1) shall be applicable to all resi-
23 dential mortgage loans and shall be applied in the
24 same manner as regulations prescribed under section
25 105.

1 “(f) Section 129B and any regulations promulgated
2 thereunder do not apply to an extension of credit relating
3 to a plan described in section 101(53D) of title 11, United
4 States Code.”.

5 (b) EFFECTIVE DATE.—The regulations required or
6 authorized to be prescribed under this subtitle or the
7 amendments made by this subtitle—

8 (1) shall be prescribed in final form before the
9 end of the 12-month period beginning on the date of
10 the enactment of this Act; and

11 (2) shall take effect not later than 18 months
12 after the date of the enactment of this Act.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
14 Section 129(l)(2) of the Truth in Lending Act (15 U.S.C.
15 1639(l)(2)) is amended by inserting “referred to in section
16 103(aa)” after “loans” each place such term appears.

17 **SEC. 9006. STUDY OF SHARED APPRECIATION MORTGAGES.**

18 (a) STUDY.—The Secretary of Housing and Urban
19 Development, in consultation with the Secretary of the
20 Treasury and other relevant agencies, shall conduct a com-
21 prehensive study to determine prudent statutory and regu-
22 latory requirements sufficient to provide for the wide-
23 spread use of shared appreciation mortgages to strengthen
24 local housing markets, provide new opportunities for af-

1 fordable homeownership, and enable homeowners at risk
 2 of foreclosure to refinance or modify their mortgages.

3 (b) REPORT.—Not later than the expiration of the
 4 6-month period beginning on the date of the enactment
 5 of this Act, the Secretary of Housing and Urban Develop-
 6 ment shall submit a report to the Congress on the results
 7 of the study, which shall include recommendations for the
 8 regulatory and legislative requirements referred to in sub-
 9 section (a).

10 **Subtitle B—Minimum Standards** 11 **For Mortgages**

12 **SEC. 9101. ABILITY TO REPAY.**

13 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 14 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 15 after section 129B (as added by section 102(a)) the fol-
 16 lowing new section:

17 **“§ 129C. Minimum standards for residential mortgage** 18 **loans**

19 “(a) ABILITY TO REPAY.—

20 “(1) IN GENERAL.—In accordance with regula-
 21 tions prescribed jointly by the Federal banking agen-
 22 cies, in consultation with the Commission, no cred-
 23 itor may make a residential mortgage loan unless
 24 the creditor makes a reasonable and good faith de-
 25 termination based on verified and documented infor-

1 mation that, at the time the loan is consummated,
2 the consumer has a reasonable ability to repay the
3 loan, according to its terms, and all applicable taxes,
4 insurance, and assessments.

5 “(2) MULTIPLE LOANS.—If the creditor knows,
6 or has reason to know, that 1 or more residential
7 mortgage loans secured by the same dwelling will be
8 made to the same consumer, the creditor shall make
9 a reasonable and good faith determination, based on
10 verified and documented information, that the con-
11 sumer has a reasonable ability to repay the com-
12 bined payments of all loans on the same dwelling ac-
13 cording to the terms of those loans and all applicable
14 taxes, insurance, and assessments.

15 “(3) BASIS FOR DETERMINATION.—A deter-
16 mination under this subsection of a consumer’s abil-
17 ity to repay a residential mortgage loan shall include
18 consideration of the consumer’s credit history, cur-
19 rent income, expected income the consumer is rea-
20 sonably assured of receiving, current obligations,
21 debt-to-income ratio, employment status, and other
22 financial resources other than the consumer’s equity
23 in the dwelling or real property that secures repay-
24 ment of the loan.

1 “(4) INCOME VERIFICATION.—In order to safe-
2 guard against fraudulent reporting, any consider-
3 ation of a consumer’s income history in making a
4 determination under this subsection shall include the
5 verification of such income by the use of—

6 “(A) Internal Revenue Service transcripts
7 of tax returns provided by a third party; or

8 “(B) such other similar method that quick-
9 ly and effectively verifies income documentation
10 by a third party as the Federal banking agen-
11 cies may jointly prescribe.

12 “(5) NONSTANDARD LOANS.—

13 “(A) VARIABLE RATE LOANS THAT DEFER
14 REPAYMENT OF ANY PRINCIPAL OR INTER-
15 EST.—For purposes of determining, under this
16 subsection, a consumer’s ability to repay a vari-
17 able rate residential mortgage loan that allows
18 or requires the consumer to defer the repay-
19 ment of any principal or interest, the creditor
20 shall use a fully amortizing repayment schedule.

21 “(B) INTEREST-ONLY LOANS.—For pur-
22 poses of determining, under this subsection, a
23 consumer’s ability to repay a residential mort-
24 gage loan that permits or requires the payment
25 of interest only, the creditor shall use the pay-

1 ment amount required to amortize the loan by
2 its final maturity.

3 “(C) CALCULATION FOR NEGATIVE AMOR-
4 TIZATION.—In making any determination under
5 this subsection, a creditor shall also take into
6 consideration any balance increase that may ac-
7 crue from any negative amortization provision.

8 “(D) CALCULATION PROCESS.—For pur-
9 poses of making any determination under this
10 subsection, a creditor shall calculate the month-
11 ly payment amount for principal and interest on
12 any residential mortgage loan by assuming—

13 “(i) the loan proceeds are fully dis-
14 bursed on the date of the consummation of
15 the loan;

16 “(ii) the loan is to be repaid in sub-
17 stantially equal monthly amortizing pay-
18 ments for principal and interest over the
19 entire term of the loan with no balloon
20 payment, unless the loan contract requires
21 more rapid repayment (including balloon
22 payment), in which case the calculation
23 shall be made (I) in accordance with regu-
24 lations prescribed by the Federal banking
25 agencies, with respect to any loan which

1 has an annual percentage rate that does
2 not exceed the average prime offer rate for
3 a comparable transaction, as of the date
4 the interest rate is set, by 1.5 or more per-
5 centage points for a first lien residential
6 mortgage loan; and by 3.5 or more per-
7 centage points for a subordinate lien resi-
8 dential mortgage loan; or (II) using the
9 contract's repayment schedule, with re-
10 spect to a loan which has an annual per-
11 centage rate, as of the date the interest
12 rate is set, that is at least 1.5 percentage
13 points above the average prime offer rate
14 for a first lien residential mortgage loan;
15 and 3.5 percentage points above the aver-
16 age prime offer rate for a subordinate lien
17 residential mortgage loan; and

18 “(iii) the interest rate over the entire
19 term of the loan is a fixed rate equal to the
20 fully indexed rate at the time of the loan
21 closing, without considering the introduc-
22 tory rate.

23 “(E) REFINANCE OF HYBRID LOANS WITH
24 CURRENT LENDER.—In considering any appli-
25 cation for refinancing an existing hybrid loan

1 by the creditor into a standard loan to be made
2 by the same creditor in any case in which the
3 sole net-tangible benefit to the mortgagor would
4 be a reduction in monthly payment and the
5 mortgagor has not been delinquent on any pay-
6 ment on the existing hybrid loan, the creditor
7 may—

8 “(i) consider the mortgagor’s good
9 standing on the existing mortgage;

10 “(ii) consider if the extension of new
11 credit would prevent a likely default should
12 the original mortgage reset and give such
13 concerns a higher priority as an acceptable
14 underwriting practice; and

15 “(iii) offer rate discounts and other
16 favorable terms to such mortgagor that
17 would be available to new customers with
18 high credit ratings based on such under-
19 writing practice.

20 “(6) FULLY-INDEXED RATE DEFINED.—For
21 purposes of this subsection, the term ‘fully indexed
22 rate’ means the index rate prevailing on a residential
23 mortgage loan at the time the loan is made plus the
24 margin that will apply after the expiration of any in-
25 troductory interest rates.

1 “(7) REVERSE MORTGAGES.—This subsection
2 shall not apply with respect to any reverse mort-
3 gage”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 2 of the Truth in Lending Act is amended
6 by inserting after the item relating to section 129B (as
7 added by section 102(b)) the following new item:

“129C. Minimum standards for residential mortgage loans.”.

8 **SEC. 9102. NET TANGIBLE BENEFIT FOR REFINANCING OF**
9 **RESIDENTIAL MORTGAGE LOANS.**

10 Section 129C of the Truth in Lending Act (as added
11 by section 9101(a)) is amended by inserting after sub-
12 section (a) the following new subsection:

13 “(b) NET TANGIBLE BENEFIT FOR REFINANCING OF
14 RESIDENTIAL MORTGAGE LOANS.—

15 “(1) IN GENERAL.—In accordance with regula-
16 tions prescribed under paragraph (3), no creditor
17 may extend credit in connection with any residential
18 mortgage loan that involves a refinancing of a prior
19 existing residential mortgage loan unless the creditor
20 reasonably and in good faith determines, at the time
21 the loan is consummated and on the basis of infor-
22 mation known by or obtained in good faith by the
23 creditor, that the refinanced loan will provide a net
24 tangible benefit to the consumer.

1 “(2) CERTAIN LOANS PROVIDING NO NET TAN-
2 GIBLE BENEFIT.—A residential mortgage loan that
3 involves a refinancing of a prior existing residential
4 mortgage loan shall not be considered to provide a
5 net tangible benefit to the consumer if the costs of
6 the refinanced loan, including points, fees and other
7 charges, exceed the amount of any newly advanced
8 principal without any corresponding changes in the
9 terms of the refinanced loan that are advantageous
10 to the consumer.

11 “(3) NET TANGIBLE BENEFIT.—The Federal
12 banking agencies shall jointly prescribe regulations
13 defining the term ‘net tangible benefit’ for purposes
14 of this subsection.”.

15 **SEC. 9103. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

16 Section 129C of the Truth in Lending Act is amend-
17 ed by inserting after subsection (b) (as added by section
18 9102) the following new subsection:

19 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET
20 TANGIBLE BENEFIT.—

21 “(1) IN GENERAL.—Any creditor with respect
22 to any residential mortgage loan, and any assignee
23 or securitizer of such loan, may presume that the
24 loan has met the requirements of subsections (a)
25 and (b), if the loan is a qualified mortgage.

1 “(2) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:

3 “(A) QUALIFIED MORTGAGE.—The term
4 ‘qualified mortgage’ means any residential
5 mortgage loan—

6 “(i) that does not allow a consumer to
7 defer repayment of principal or interest, or
8 is not otherwise deemed a ‘non-traditional
9 mortgage’ under guidance, advisories, or
10 regulations prescribed by the Federal
11 Banking Agencies;

12 “(ii) that does not provide for a re-
13 payment schedule that results in negative
14 amortization at any time;

15 “(iii) for which the terms are fully
16 amortizing and which does not result in a
17 balloon payment, where a ‘balloon pay-
18 ment’ is a scheduled payment that is more
19 than twice as large as the average of ear-
20 lier scheduled payments;

21 “(iv) which has an annual percentage
22 rate that does not exceed the average
23 prime offer rate for a comparable trans-
24 action, as of the date the interest rate is
25 set—

1 “(I) by 1.5 or more percentage
2 points, in the case of a first lien resi-
3 dential mortgage loan having a origi-
4 nal principal obligation amount that is
5 equal to or less than the amount of
6 the maximum limitation on the origi-
7 nal principal obligation of mortgage in
8 effect for a residence of the applicable
9 size, as of the date of such interest
10 rate set, pursuant to the sixth sen-
11 tence of section 305(a)(2) the Federal
12 Home Loan Mortgage Corporation
13 Act (12 U.S.C. 1454(a)(2));

14 “(II) by 2.5 or more percentage
15 points, in the case of a first lien resi-
16 dential mortgage loan having a origi-
17 nal principal obligation amount that is
18 more than the amount of the max-
19 imum limitation on the original prin-
20 cipal obligation of mortgage in effect
21 for a residence of the applicable size,
22 as of the date of such interest rate
23 set, pursuant to the sixth sentence of
24 section 305(a)(2) the Federal Home

1 Loan Mortgage Corporation Act (12
2 U.S.C. 1454(a)(2)); and

3 “(III) by 3.5 or more percentage
4 points, in the case of a subordinate
5 lien residential mortgage loan;

6 “(v) for which the income and finan-
7 cial resources relied upon to qualify the ob-
8 ligors on the loan are verified and docu-
9 mented;

10 “(vi) in the case of a fixed rate loan,
11 for which the underwriting process is based
12 on a payment schedule that fully amortizes
13 the loan over the loan term and takes into
14 account all applicable taxes, insurance, and
15 assessments;

16 “(vii) in the case of an adjustable rate
17 loan, for which the underwriting is based
18 on the maximum rate permitted under the
19 loan during the first seven years, and a
20 payment schedule that fully amortizes the
21 loan over the loan term and takes into ac-
22 count all applicable taxes, insurance, and
23 assessments;

24 “(viii) that does not cause the con-
25 sumer’s total monthly debts, including

1 amounts under the loan, to exceed a per-
2 centage established by regulation of the
3 consumer's monthly gross income or such
4 other maximum percentage of such income
5 as may be prescribed by regulation under
6 paragraph (4), and such rules shall also
7 take into consideration the consumer's in-
8 come available to pay regular expenses
9 after payment of all installment and revolv-
10 ing debt;

11 “(ix) for which the total points and
12 fees payable in connection with the loan do
13 not exceed 2 percent of the total loan
14 amount, where ‘points and fees’ means
15 points and fees as defined by Section
16 103(aa)(4) of the Truth in Lending Act
17 (15 U.S.C. 1602(aa)(4)); and

18 “(x) for which the term of the loan
19 does not exceed 30 years, except as such
20 term may be extended under paragraph
21 (4).

22 “(B) AVERAGE PRIME OFFER RATE.—The
23 term ‘average prime offer rate’ means an an-
24 nual percentage rate that is derived from aver-
25 age interest rates, points, and other loan prie-

1 ing terms currently offered to consumers by a
2 representative sample of creditors for mortgage
3 transactions that have low risk pricing charac-
4 teristics.

5 “(C) REVERSE MORTGAGES.—For pur-
6 poses of this subsection, the term ‘qualified
7 mortgage’ includes any reverse mortgage that is
8 insured by the Federal Housing Administration
9 or complies with the condition established in
10 subparagraph (A)(iv).

11 “(3) PUBLICATION OF AVERAGE PRIME OFFER
12 RATE AND APR THRESHOLDS.—The Board—

13 “(A) shall publish, and update at least
14 weekly, average prime offer rates;

15 “(B) may publish multiple rates based on
16 varying types of mortgage transactions; and

17 “(C) shall adjust the thresholds of 1.50
18 percentage points in paragraph (2)(A)(iv)(I),
19 2.50 percentage points in paragraph
20 (2)(A)(iv)(II), and 3.50 percentage points in
21 paragraph (2)(A)(v)(III), as necessary to reflect
22 significant changes in market conditions and to
23 effectuate the purposes of the Mortgage Reform
24 and Anti-Predatory Lending Act.

25 “(4) REGULATIONS.—

1 “(A) IN GENERAL.—The Federal banking
2 agencies shall jointly prescribe regulations to
3 carry out the purposes of this subsection.

4 “(B) REVISION OF SAFE HARBOR CRI-
5 TERIA.—

6 “(i) IN GENERAL.—The Federal bank-
7 ing agencies may jointly prescribe regula-
8 tions that revise, add to, or subtract from
9 the criteria that define a qualified mort-
10 gage upon a finding that such regulations
11 are necessary or proper to ensure that re-
12 sponsible, affordable mortgage credit re-
13 mains available to consumers in a manner
14 consistent with the purposes of this sec-
15 tion, necessary and appropriate to effec-
16 tuate the purposes of this section and sec-
17 tion 129B, to prevent circumvention or
18 evasion thereof, or to facilitate compliance
19 with such sections.

20 “(ii) LOAN DEFINITION.—The fol-
21 lowing agencies shall, in consultation with
22 the Federal banking agencies, prescribe
23 rules defining the types of loans they in-
24 sure, guarantee or administer, as the case
25 may be, that are Qualified Mortgages for

1 purposes of subsection (c)(1)(A) upon a
2 finding that such rules are consistent with
3 the purposes of this section and section
4 129B, to prevent circumvention or evasion
5 thereof, or to facilitate compliance with
6 such sections—

7 “(I) The Department of Housing
8 and Urban Development, with regard
9 to mortgages insured under title II of
10 the National Housing Act (12 U.S.C.
11 1707 et seq.);

12 “(II) The Secretary of Veterans
13 Affairs, with regard to a loan made or
14 guaranteed by the Secretary of Vet-
15 erans Affairs;

16 “(III) The Secretary of Agri-
17 culture, with regard loans guaranteed
18 by the Secretary of Agriculture pursu-
19 ant to 42 U.S.C. 1472(h);

20 “(IV) The Federal Housing Fi-
21 nance Agency, with regard to loans
22 meeting the conforming loan stand-
23 ards of the Federal National Mort-
24 gage Corporation or the Federal

1 Home Loan Mortgage Corporation;
2 and
3 “(V) The Rural Housing Service,
4 with regard to loans insured by the
5 Rural Housing Service.”.

6 **SEC. 9104. LIABILITY.**

7 Section 129C of the Truth in Lending Act is amend-
8 ed by inserting after subsection (c) (as added by section
9 9103) the following new subsection:

10 “(d) LIABILITY FOR VIOLATIONS.—

11 “(1) IN GENERAL.—

12 “(A) RESCISSION.—In addition to any
13 other liability under this title for a violation by
14 a creditor of subsection (a) or (b) (for example
15 under section 130) and subject to the statute of
16 limitations in paragraph (9), a civil action may
17 be maintained against a creditor for a violation
18 of subsection (a) or (b) with respect to a resi-
19 dential mortgage loan for the rescission of the
20 loan, and such additional costs as the obligor
21 may have incurred as a result of the violation
22 and in connection with obtaining a rescission of
23 the loan, including a reasonable attorney’s fee.

24 “(B) CURE.—A creditor shall not be liable
25 for rescission under subparagraph (A) with re-

1 spect to a residential mortgage loan if, no later
2 than 90 days after the receipt of notification
3 from the consumer that the loan violates sub-
4 section (a) or (b), the creditor, acting in good
5 faith, a cure.

6 “(2) LIMITED ASSIGNEE AND SECURITIZER LI-
7 ABILITY.—Notwithstanding sections 125(e) and 131
8 and except as provided in paragraph (3), a civil ac-
9 tion which may be maintained against a creditor
10 with respect to a residential mortgage loan for a vio-
11 lation of subsection (a) or (b) may be maintained
12 against any assignee or securitizer of such residen-
13 tial mortgage loan, who has acted in good faith, for
14 the following liabilities only:

15 “(A) Rescission of the loan.

16 “(B) Such additional costs as the obligor
17 may have incurred as a result of the violation
18 and in connection with obtaining a rescission of
19 the loan, including a reasonable attorney’s fee.

20 “(3) ASSIGNEE AND SECURITIZER EXEMP-
21 TION.—No assignee or securitizer of a residential
22 mortgage loan that has exercised reasonable due dili-
23 gence in complying with the requirements of sub-
24 sections (a) and (b), consistent with reasonable due
25 diligence practices prescribed by the Federal banking

1 agencies, shall be liable under paragraph (2) with re-
2 spect to such loan if, no later than 90 days after the
3 receipt of notification from the consumer that the
4 loan violates subsection (a) or (b), the assignee or
5 securitizer provides a cure so that the loan satisfies
6 the requirements of subsections (a) and (b).

7 “(4) ABSENT PARTIES.—

8 “(A) ABSENT CREDITOR.—Notwith-
9 standing the exemption provided in paragraph
10 (3), if the creditor with respect to a residential
11 mortgage loan made in violation of subsection
12 (a) or (b) has ceased to exist as a matter of law
13 or has filed for bankruptcy protection under
14 title 11, United States Code, or has had a re-
15 ceiver, conservator, or liquidating agent ap-
16 pointed, a consumer may maintain a civil action
17 against an assignee to cure the residential
18 mortgage loan, plus the costs and reasonable
19 attorney’s fees incurred in obtaining such rem-
20 edy.

21 “(B) ABSENT CREDITOR AND ASSIGNEE.—

22 Notwithstanding the exemption provided in
23 paragraph (3), if the creditor with respect to a
24 residential mortgage loan made in violation of
25 subsection (a) or (b) and each assignee of such

1 loan have ceased to exist as a matter of law or
2 have filed for bankruptcy protection under title
3 11, United States Code, or have had receivers,
4 conservators, or liquidating agents appointed,
5 the consumer may maintain the civil action re-
6 ferred to in subparagraph (A) against the
7 securitizer.

8 “(5) CURE DEFINED.—For purposes of this
9 subsection, the term ‘cure’ means, with respect to a
10 residential mortgage loan that violates subsection (a)
11 or (b), the modification or refinancing, at no cost to
12 the consumer, of the loan to provide terms that sat-
13 isfy the requirements of subsections (a) and (b) and
14 the payment of such additional costs as the obligor
15 may have incurred in connection with obtaining a
16 cure of the loan, including a reasonable attorney’s
17 fee.

18 “(6) DISAGREEMENT OVER CURE.—If any cred-
19 itor, assignee, or securitizer and a consumer fail to
20 reach agreement on a cure with respect to a residen-
21 tial mortgage loan that violates subsection (a) or (b),
22 or the consumer fails to accept a cure proffered by
23 a creditor, assignee, or securitizer—

24 “(A) the creditor, assignee, or securitizer
25 may provide the cure; and

1 “(B) the consumer may challenge the ade-
2 quacy of the cure during the 6-month period be-
3 ginning when the cure is provided.

4 If the consumer’s challenge, under this paragraph,
5 of a cure is successful, the creditor, assignee, or
6 securitizer shall be liable to the consumer for rescis-
7 sion of the loan and such additional costs under
8 paragraph (2).

9 “(7) INABILITY TO PROVIDE OR OBTAIN RE-
10 SCISSION.—If a creditor, assignee, or securitizer
11 cannot provide, or a consumer cannot obtain, rescis-
12 sion under paragraph (1) or (2), the liability of such
13 creditor, assignee, or securitizer shall be met by pro-
14 viding the financial equivalent of a rescission, to-
15 gether with such additional costs as the obligor may
16 have incurred as a result of the violation and in con-
17 nection with obtaining a rescission of the loan, in-
18 cluding a reasonable attorney’s fee.

19 “(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR
20 SECURITIZER UNDER PARAGRAPH (2).—Only indi-
21 vidual actions may be brought against an assignee
22 or securitizer of a residential mortgage loan for a
23 violation of subsection (a) or (b).

24 “(9) STATUTE OF LIMITATIONS.—The liability
25 of a creditor, assignee, or securitizer under this sub-

1 section shall apply in any original action against a
2 creditor under paragraph (1) or an assignee or
3 securitizer under paragraph (2) which is brought be-
4 fore—

5 “(A) in the case of any residential mort-
6 gage loan other than a loan to which subpara-
7 graph (B) applies, the end of the 3-year period
8 beginning on the date the loan is consummated;
9 or

10 “(B) in the case of a residential mortgage
11 loan that provides for a fixed interest rate for
12 an introductory period and then resets or ad-
13 justs to a variable rate or that provides for a
14 nonamortizing payment schedule and then con-
15 verts to an amortizing payment schedule, the
16 earlier of—

17 “(i) the end of the 1-year period be-
18 ginning on the date of such reset, adjust-
19 ment, or conversion; or

20 “(ii) the end of the 6-year period be-
21 ginning on the date the loan is con-
22 summated.

23 “(10) TRUSTEES, POOLS, AND INVESTORS IN
24 POOLS EXCLUDED.—In the case of residential mort-
25 gage loans acquired or aggregated for the purpose of

1 including such loans in a pool of assets held for the
2 purpose of issuing or selling instruments rep-
3 resenting interests in such pools including through a
4 securitization vehicle, the terms ‘assignee’ and
5 ‘securitizer’, as used in this section, do not include
6 the securitization vehicle, any trustee that holds
7 such loans solely for the benefit of the securitization
8 vehicle, the pools of such loans or any original or
9 subsequent purchaser of any interest in the
10 securitization vehicle or any instrument representing
11 a direct or indirect interest in such pool.

12 “(e) OBLIGATION OF SECURITIZERS, AND PRESERVA-
13 TION OF BORROWER REMEDIES.—

14 “(1) OBLIGATION TO RETAIN ACCESS.—Any
15 securitizer of a residential mortgage loan sold or to
16 be sold as part of a securitization vehicle shall, in
17 any document or contract providing for the transfer,
18 conveyance, or the establishment of such
19 securitization vehicle, reserve the right and preserve
20 the ability—

21 “(A) to identify and obtain access to any
22 such loan;

23 “(B) to acquire any such loan in the event
24 of a violation of subsection (a) or (b) of this
25 section; and

1 “(C) to provide to the consumer any and
2 all remedies provided for under this title for
3 any violation of this title.

4 “(2) ADDITIONAL DAMAGES.—Any creditor, as-
5 signee, or securitizer of a residential mortgage loan
6 that is subject to a remedy under subsection (d) and
7 has failed to comply with paragraph (1) shall be
8 subject to additional exemplary or punitive damages
9 not to exceed the original principal balance of such
10 loan.

11 “(3) CONTACT INFORMATION NOTICE.—The
12 servicer with respect to a residential mortgage loan
13 shall provide a written notice to a consumer identi-
14 fying the name and contact information of the cred-
15 itor or any assignee or securitizer who should be
16 contacted by the consumer for any reason con-
17 cerning the consumer’s rights with respect to the
18 loan. Such notice shall be provided—

19 “(A) upon request of the consumer;

20 “(B) whenever there is a change in owner-
21 ship of a residential mortgage loan; or

22 “(C) on a regular basis, not less than an-
23 nually.

24 “(f) RULES TO ESTABLISH PROCESS.—The Board
25 shall promulgate rules to govern the rescission process es-

1 tablished for violations of subsections (a) and (b) of this
 2 section. Such rules shall provide that notice given to a
 3 servicer or holder is sufficient notice regardless of the
 4 identity of the party or the parties liable under this title.”.

5 **SEC. 9105. DEFENSE TO FORECLOSURE.**

6 Section 129C of the Truth in Lending Act is amend-
 7 ed by inserting after subsection (f) (as added by section
 8 9104) the following new subsections:

9 “(g) DEFENSE TO FORECLOSURE.—Notwithstanding
 10 any other provision of law—

11 “(1) when the holder of a residential mortgage
 12 loan or anyone acting for such holder initiates a ju-
 13 dicial or nonjudicial foreclosure—

14 “(A) a consumer who has the right to re-
 15 scind under this section with respect to such
 16 loan against the creditor or any assignee or
 17 securitizer may assert such right as a defense
 18 to foreclosure or counterclaim to such fore-
 19 closure against the holder, or

20 “(B) if the foreclosure proceeding begins
 21 after the end of the period during which a con-
 22 sumer may bring an action for rescission under
 23 subsection (d) and the consumer would have
 24 had a valid basis for such an action if it had
 25 been brought before the end of such period, the

1 consumer may seek actual damages incurred by
2 reason of the violation which gave rise to the
3 right of rescission, together with costs of the
4 action, including a reasonable attorney's fee
5 against the creditor or any assignee or
6 securitizer; and

7 “(2) such holder or anyone acting for such
8 holder or any other applicable third party may sell,
9 transfer, convey, or assign a residential mortgage
10 loan to a creditor, any assignee, or any securitizer,
11 or their designees, subject to the rights of the con-
12 sumer described in this subsection, to effect a rescis-
13 sion or cure.”.

14 **SEC. 9106. ADDITIONAL STANDARDS AND REQUIREMENTS.**

15 (a) IN GENERAL.—Section 129C of the Truth in
16 Lending Act is amended by inserting after subsection (g)
17 (as added by section 9105) the following new subsections:

18 “(h) PROHIBITION ON CERTAIN PREPAYMENT PEN-
19 ALTIES.—

20 “(1) PROHIBITED ON CERTAIN LOANS.—A resi-
21 dential mortgage loan that is not a ‘qualified mort-
22 gage’ may not contain terms under which a con-
23 sumer must pay a prepayment penalty for paying all
24 or part of the principal after the loan is con-
25 summated. For purposes of this subsection, a ‘quali-

1 fied mortgage’ may not include a residential mort-
2 gage loan that has an adjustable rate.

3 “(2) PHASED-OUT PENALTIES ON QUALIFIED
4 MORTGAGES.—A qualified mortgage (as defined in
5 subsection (c)) may not contain terms under which
6 a consumer must pay a prepayment penalty for pay-
7 ing all or part of the principal after the loan is con-
8 summated in excess of the following limitations:

9 “(A) During the 1-year period beginning
10 on the date the loan is consummated, the pre-
11 payment penalty shall not exceed an amount
12 equal to 3 percent of the outstanding balance
13 on the loan.

14 “(B) During the 1-year period beginning
15 after the period described in subparagraph (A),
16 the prepayment penalty shall not exceed an
17 amount equal to 2 percent of the outstanding
18 balance on the loan.

19 “(C) During the 1-year period beginning
20 after the 1-year period described in subpara-
21 graph (B), the prepayment penalty shall not ex-
22 ceed an amount equal to 1 percent of the out-
23 standing balance on the loan.

24 “(D) After the end of the 3-year period be-
25 ginning on the date the loan is consummated,

1 no prepayment penalty may be imposed on a
2 qualified mortgage.

3 “(3) OPTION FOR NO PREPAYMENT PENALTY
4 REQUIRED.—A creditor may not offer a consumer a
5 residential mortgage loan product that has a prepay-
6 ment penalty for paying all or part of the principal
7 after the loan is consummated as a term of the loan
8 without offering the consumer a residential mort-
9 gage loan product that does not have a prepayment
10 penalty as a term of the loan.

11 “(i) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
12 ITED.—No creditor may finance, directly or indirectly, in
13 connection with any residential mortgage loan or with any
14 extension of credit under an open end consumer credit
15 plan secured by the principal dwelling of the consumer
16 (other than a reverse mortgage), any credit life, credit dis-
17 ability, credit unemployment or credit property insurance,
18 or any other accident, loss-of-income, life or health insur-
19 ance, or any payments directly or indirectly for any debt
20 cancellation or suspension agreement or contract, except
21 that—

22 “(1) insurance premiums or debt cancellation or
23 suspension fees calculated and paid in full on a
24 monthly basis shall not be considered financed by
25 the creditor; and

1 “(2) this subsection shall not apply to credit
2 unemployment insurance for which the unemploy-
3 ment insurance premiums are reasonable, the cred-
4 itor receives no direct or indirect compensation in
5 connection with the unemployment insurance pre-
6 miums, and the unemployment insurance premiums
7 are paid pursuant to another insurance contract and
8 not paid to an affiliate of the creditor.

9 “(j) ARBITRATION.—

10 “(1) IN GENERAL.—No residential mortgage
11 loan and no extension of credit under an open end
12 consumer credit plan secured by the principal dwell-
13 ing of the consumer, other than a reverse mortgage,
14 may include terms which require arbitration or any
15 other nonjudicial procedure as the method for resolv-
16 ing any controversy or settling any claims arising
17 out of the transaction.

18 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
19 ject to paragraph (3), paragraph (1) shall not be
20 construed as limiting the right of the consumer and
21 the creditor, any assignee, or any securitizer to
22 agree to arbitration or any other nonjudicial proce-
23 dure as the method for resolving any controversy at
24 any time after a dispute or claim under the trans-
25 action arises.

1 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
2 TION.—No provision of any residential mortgage
3 loan or of any extension of credit under an open end
4 consumer credit plan secured by the principal dwell-
5 ing of the consumer (other than a reverse mort-
6 gage), and no other agreement between the con-
7 sumer and the creditor relating to the residential
8 mortgage loan or extension of credit referred to in
9 paragraph (1), shall be applied or interpreted so as
10 to bar a consumer from bringing an action in an ap-
11 propriate district court of the United States, or any
12 other court of competent jurisdiction, pursuant to
13 section 130 or any other provision of law, for dam-
14 ages or other relief in connection with any alleged
15 violation of this section, any other provision of this
16 title, or any other Federal law.

17 “(k) MORTGAGES WITH NEGATIVE AMORTIZA-
18 TION.—No creditor may extend credit to a borrower in
19 connection with a consumer credit transaction under an
20 open or closed end consumer credit plan secured by a
21 dwelling or residential real property that includes a dwell-
22 ing, other than a reverse mortgage, that provides or per-
23 mits a payment plan that may, at any time over the term
24 of the extension of credit, result in negative amortization
25 unless, before such transaction is consummated—

1 “(1) the creditor provides the consumer with a
2 statement that—

3 “(A) the pending transaction will or may,
4 as the case may be, result in negative amortiza-
5 tion;

6 “(B) describes negative amortization in
7 such manner as the Federal banking agencies
8 shall prescribe;

9 “(C) negative amortization increases the
10 outstanding principal balance of the account;
11 and

12 “(D) negative amortization reduces the
13 consumer’s equity in the dwelling or real prop-
14 erty; and

15 “(2) in the case of a first-time borrower with
16 respect to a residential mortgage loan that is not a
17 qualified mortgage, the first-time borrower provides
18 the creditor with sufficient documentation to dem-
19 onstrate that the consumer received homeownership
20 counseling from organizations or counselors certified
21 by the Secretary of Housing and Urban Develop-
22 ment as competent to provide such counseling.”.

23 (b) CONFORMING AMENDMENT RELATING TO EN-
24 FORCEMENT.—Section 108(a) of the Truth in Lending

1 Act (15 U.S.C. 1607(a)) is amended by inserting after
2 paragraph (6) the following new paragraph:

3 “(7) sections 21B and 21C of the Securities
4 Exchange Act of 1934, in the case of a broker or
5 dealer, other than a depository institution, by the
6 Securities and Exchange Commission.”.

7 (c) PROTECTION AGAINST LOSS OF ANTI-DEFI-
8 CIENCY PROTECTION.—Section 129C of the Truth in
9 Lending Act is amended by inserting after subsection (k)
10 (as added by subsection (a) of this section) the following
11 new subsection (and designated succeeding subsections ac-
12 cordingly):

13 “(l) PROTECTION AGAINST LOSS OF ANTI-DEFI-
14 CIENCY PROTECTION.—

15 “(1) DEFINITION.—For purposes of this sub-
16 section, the term ‘anti-deficiency law’ means the law
17 of any State which provides that, in the event of
18 foreclosure on the residential property of a consumer
19 securing a mortgage, the consumer is not liable, in
20 accordance with the terms and limitations of such
21 State law, for any deficiency between the sale price
22 obtained on such property through foreclosure and
23 the outstanding balance of the mortgage.

24 “(2) NOTICE AT TIME OF CONSUMMATION.—In
25 the case of any residential mortgage loan that is, or

1 upon consummation will be, subject to protection
2 under an anti-deficiency law, the creditor or mort-
3 gage originator shall provide a written notice to the
4 consumer describing the protection provided by the
5 anti-deficiency law and the significance for the con-
6 sumer of the loss of such protection before such loan
7 is consummated.

8 “(3) NOTICE BEFORE REFINANCING THAT
9 WOULD CAUSE LOSS OF PROTECTION.—In the case
10 of any residential mortgage loan that is subject to
11 protection under an anti-deficiency law, if a creditor
12 or mortgage originator provides an application to a
13 consumer, or receives an application from a con-
14 sumer, for any type of refinancing for such loan that
15 would cause the loan to lose the protection of such
16 anti-deficiency law, the creditor or mortgage origi-
17 nator shall provide a written notice to the consumer
18 describing the protection provided by the anti-defi-
19 ciency law and the significance for the consumer of
20 the loss of such protection before any agreement for
21 any such refinancing is consummated.”.

22 (d) POLICY REGARDING ACCEPTANCE OF PARTIAL
23 PAYMENT.—Section 129C of the Truth in Lending Act
24 is amended by inserting after subsection (l) (as added by
25 subsection (c)) the following new subsection:

1 “(m) POLICY REGARDING ACCEPTANCE OF PARTIAL
2 PAYMENT.—In the case of any residential mortgage loan,
3 a creditor shall disclose prior to settlement or, in the case
4 of a person becoming a creditor with respect to an existing
5 residential mortgage loan, at the time such person be-
6 comes a creditor—

7 “(1) the creditor’s policy regarding the accept-
8 ance of partial payments; and

9 “(2) if partial payments are accepted, how such
10 payments will be applied to such mortgage and if
11 such payments will be placed in escrow.”.

12 **SEC. 9107. RULE OF CONSTRUCTION.**

13 Except as otherwise expressly provided in section
14 129B or 129C of the Truth in Lending Act (as added by
15 this subtitle), no provision of such section 129B or 129C
16 shall be construed as superseding, repealing, or affecting
17 any duty, right, obligation, privilege, or remedy of any per-
18 son under any other provision of the Truth in Lending
19 Act or any other provision of Federal or State law.

20 **SEC. 9108. EFFECT ON STATE LAWS.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), section 129C(d) of the Truth in Lending Act (as
23 added by section 9104) shall supersede any State law to
24 the extent that it provides additional remedies against any
25 assignee, securitizer, or securitization vehicle for a viola-

1 tion of subsection (a) or (b) of section 129C of such Act
2 or any other State law the terms of which address the
3 specific subject matter of subsection (a) (determination of
4 ability to repay) or (b) (requirement of a net tangible ben-
5 efit) of section 129C of such Act, and the remedies de-
6 scribed in section 129C(d) shall constitute the sole rem-
7 edies against any assignee, securitizer, or securitization
8 vehicle for such violations.

9 (b) RULES OF CONSTRUCTION.—No provision of this
10 section shall be construed as limiting—

11 (1) the application of any State law, or the
12 availability of remedies under such law, against a
13 creditor for a particular residential mortgage loan
14 regardless of whether such creditor also acts as an
15 assignee, securitizer, or securitization vehicle for
16 such loan;

17 (2) the application of any State law, or the
18 availability of remedies under such law, against an
19 assignee, securitizer, or securitization vehicle under
20 State law, other than a provision of such law the
21 terms of which address the specific subject matter of
22 subsection (a) (determination of ability to repay) or
23 (b) (requirement of a net tangible benefit) of section
24 129C of such Act;

1 (3)(A) the application of any State law, or the
2 availability of remedies under such law, against an
3 assignee, securitizer or securitization vehicle for its
4 participation in or direction of the credit or under-
5 writing decisions of a creditor relating to the making
6 of a residential mortgage loan; or

7 (B) the ability of a consumer to assert any
8 rights against or obtain any remedies from an as-
9 signee, securitizer or securitization vehicle with re-
10 spect to a residential mortgage loan as a defense to
11 foreclosure under section 129C(g);

12 (4) the availability of any equitable remedies,
13 including injunctive relief, under State law; or

14 (5) notwithstanding paragraph (2), the avail-
15 ability of any remedies under State law against any
16 assignee, securitizer or securitization vehicle that—

17 (A) are in addition to those remedies pro-
18 vided for in section 129C; and

19 (B) were in effect on the date of enactment
20 of this Act.

21 **SEC. 9109. REGULATIONS.**

22 Regulations required or authorized to be prescribed
23 under this subtitle or the amendments made by this sub-
24 title—

1 (1) shall be prescribed in final form before the
2 end of the 12-month period beginning on the date of
3 the enactment of this Act; and

4 (2) shall take effect not later than 18 months
5 after the date of the enactment of this Act.

6 **SEC. 9110. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

7 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
8 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of
9 the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is
10 amended—

11 (1) by striking “\$100” and inserting “\$200”;

12 (2) by striking “\$1,000” and inserting
13 “\$2,000”; and

14 (3) by striking “\$500,000” and inserting
15 “\$1,000,000”.

16 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
17 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
18 Lending Act (15 U.S.C. 1640(e)) is amended—

19 (1) in the first sentence, by striking “Any ac-
20 tion” and inserting “Except as provided in the sub-
21 sequent sentence, any action”; and

22 (2) by inserting after the first sentence the fol-
23 lowing new sentence: “Any action under this section
24 with respect to any violation of section 129 may be
25 brought in any United States district court, or in

1 any other court of competent jurisdiction, before the
 2 end of the 3-year period beginning on the date of the
 3 occurrence of the violation.”.

4 **SEC. 9111. LENDER RIGHTS IN THE CONTEXT OF BOR-**
 5 **ROWER DECEPTION.**

6 Section 130 of the Truth in Lending Act is amended
 7 by adding at the end the following new subsection:

8 “(k) EXEMPTION FROM LIABILITY AND RESCISSION
 9 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
 10 dition to any other remedy available by law or contract,
 11 no creditor, assignee, or securitizer shall be liable to an
 12 obligor under this section, nor shall it be subject to the
 13 right of rescission of any obligor under 129B, if such obli-
 14 gor, or co-obligor, knowingly, or willfully and with actual
 15 knowledge furnished material information known to be
 16 false for the purpose of obtaining such residential mort-
 17 gage loan.”.

18 **SEC. 9112. SIX-MONTH NOTICE REQUIRED BEFORE RESET**
 19 **OF HYBRID ADJUSTABLE RATE MORTGAGES.**

20 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 21 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 22 after section 128 the following new section:

23 **“§ 128A. Reset of hybrid adjustable rate mortgages**

24 “(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-
 25 FINED.—For purposes of this section, the term ‘hybrid ad-

1 justable rate mortgage’ means a consumer credit trans-
2 action secured by the consumer’s principal residence with
3 a fixed interest rate for an introductory period that ad-
4 justs or resets to a variable interest rate after such period.

5 “(b) NOTICE OF RESET AND ALTERNATIVES.—Dur-
6 ing the 1-month period that ends 6 months before the date
7 on which the interest rate in effect during the introductory
8 period of a hybrid adjustable rate mortgage adjusts or
9 resets to a variable interest rate or, in the case of such
10 an adjustment or resetting that occurs within the first 6
11 months after consummation of such loan, at consumma-
12 tion, the creditor or servicer of such loan shall provide a
13 written notice, separate and distinct from all other cor-
14 respondence to the consumer, that includes the following:

15 “(1) Any index or formula used in making ad-
16 justments to or resetting the interest rate and a
17 source of information about the index or formula.

18 “(2) An explanation of how the new interest
19 rate and payment would be determined, including an
20 explanation of how the index was adjusted, such as
21 by the addition of a margin.

22 “(3) A good faith estimate, based on accepted
23 industry standards, of the creditor or servicer of the
24 amount of the monthly payment that will apply after

1 the date of the adjustment or reset, and the assump-
2 tions on which this estimate is based.

3 “(4) A list of alternatives consumers may pur-
4 sue before the date of adjustment or reset, and de-
5 scriptions of the actions consumers must take to
6 pursue these alternatives, including—

7 “(A) refinancing;

8 “(B) renegotiation of loan terms;

9 “(C) payment forbearances; and

10 “(D) pre-foreclosure sales.

11 “(5) The names, addresses, telephone numbers,
12 and Internet addresses of counseling agencies or
13 programs reasonably available to the consumer that
14 have been certified or approved and made publicly
15 available by the Secretary of Housing and Urban
16 Development or a State housing finance authority
17 (as defined in section 1301 of the Financial Institu-
18 tions Reform, Recovery, and Enforcement Act of
19 1989).

20 “(6) The address, telephone number, and Inter-
21 net address for the State housing finance authority
22 (as so defined) for the State in which the consumer
23 resides.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 for chapter 2 of the Truth in Lending Act is amended

1 by inserting after the item relating to section 128 the fol-
2 lowing new item:

“128A. Reset of hybrid adjustable rate mortgages.”.

3 **SEC. 9113. REQUIRED DISCLOSURES.**

4 Section 128(a) of Truth in Lending Act (15 U.S.C.
5 1638(a)) is amended by adding at the end the following
6 new paragraphs:

7 “(16) In the case of a variable rate residential
8 mortgage loan for which an escrow or impound ac-
9 count will be established for the payment of all ap-
10 plicable taxes, insurance, and assessments—

11 “(A) the amount of initial monthly pay-
12 ment due under the loan for the payment of
13 principal and interest, and the amount of such
14 initial monthly payment including the monthly
15 payment deposited in the account for the pay-
16 ment of all applicable taxes, insurance, and as-
17 sessments; and

18 “(B) the amount of the fully indexed
19 monthly payment due under the loan for the
20 payment of principal and interest, and the
21 amount of such fully indexed monthly payment
22 including the monthly payment deposited in the
23 account for the payment of all applicable taxes,
24 insurance, and assessments.

1 “(17) In the case of a residential mortgage
2 loan, the aggregate amount of settlement charges for
3 all settlement services provided in connection with
4 the loan, the amount of charges that are included in
5 the loan and the amount of such charges the bor-
6 rower must pay at closing, the approximate amount
7 of the wholesale rate of funds in connection with the
8 loan, and the aggregate amount of other fees or re-
9 quired payments in connection with the loan.

10 “(18) In the case of a residential mortgage
11 loan, the aggregate amount of fees paid to the mort-
12 gage originator in connection with the loan, the
13 amount of such fees paid directly by the consumer,
14 and any additional amount received by the originator
15 from the creditor.

16 “(19) In the case of a residential mortgage
17 loan, the total amount of interest that the consumer
18 will pay over the life of the loan as a percentage of
19 the principal of the loan. Such amount shall be com-
20 puted assuming the consumer makes each monthly
21 payment in full and on-time, and does not make any
22 over-payments.”.

1 **SEC. 9114. DISCLOSURES REQUIRED IN MONTHLY STATE-**
2 **MENTS FOR RESIDENTIAL MORTGAGE**
3 **LOANS.**

4 Section 128 of the Truth in Lending Act (15 U.S.C.
5 1638) is amended by adding at the end the following new
6 subsection:

7 “(f) PERIODIC STATEMENTS FOR RESIDENTIAL
8 MORTGAGE LOANS.—

9 “(1) IN GENERAL.—The creditor, assignee, or
10 servicer with respect to any residential mortgage
11 loan shall transmit to the obligor, for each billing
12 cycle, a statement setting forth each of the following
13 items, to the extent applicable, in a conspicuous and
14 prominent manner:

15 “(A) The amount of the principal obliga-
16 tion under the mortgage.

17 “(B) The current interest rate in effect for
18 the loan.

19 “(C) The date on which the interest rate
20 may next reset or adjust.

21 “(D) The amount of any prepayment fee
22 to be charged, if any.

23 “(E) A description of any late payment
24 fees.

1 “(F) A telephone number and electronic
2 mail address that may be used by the obligor to
3 obtain information regarding the mortgage.

4 “(G) The names, addresses, telephone
5 numbers, and Internet addresses of counseling
6 agencies or programs reasonably available to
7 the consumer that have been certified or ap-
8 proved and made publicly available by the Sec-
9 retary of Housing and Urban Development or a
10 State housing finance authority (as defined in
11 section 1301 of the Financial Institutions Re-
12 form, Recovery, and Enforcement Act of 1989).

13 “(H) Such other information as the Board
14 may prescribe in regulations.

15 “(2) DEVELOPMENT AND USE OF STANDARD
16 FORM.—The Federal banking agencies shall jointly
17 develop and prescribe a standard form for the disclo-
18 sure required under this subsection, taking into ac-
19 count that the statements required may be trans-
20 mitted in writing or electronically.”.

21 **SEC. 9115. LEGAL ASSISTANCE FOR FORECLOSURE-RE-**
22 **LATED ISSUES.**

23 (a) ESTABLISHMENT.—The Secretary of Housing
24 and Urban Development (hereafter in this section referred
25 to as the “Secretary” shall establish a program for making

1 grants for providing a full range of foreclosure legal assist-
2 ance to low- and moderate-income homeowners and ten-
3 ants related to home ownership preservation, home fore-
4 closure prevention, and tenancy associated with home fore-
5 closure.

6 (b) COMPETITIVE ALLOCATION.—The Secretary shall
7 allocate amounts made available for grants under this sec-
8 tion to State and local legal organizations on the basis
9 of a competitive process. For purposes of this subsection
10 “State and local legal organizations” are those State and
11 local organizations whose primary business or mission is
12 to provide legal assistance.

13 (c) PRIORITY TO CERTAIN AREAS.—In allocating
14 amounts in accordance with subsection (b), the Secretary
15 shall give priority consideration to State and local legal
16 organizations that are operating in the 100 metropolitan
17 statistical areas (as that term is defined by the Director
18 of the Office of Management and Budget) with the highest
19 home foreclosure rates.

20 (d) LEGAL ASSISTANCE.—

21 (1) IN GENERAL.—Any State or local legal or-
22 ganization that receives financial assistance pursu-
23 ant to this section may use such amounts only to as-
24 sist—

1 (A) homeowners of owner-occupied homes
2 with mortgages in default, in danger of default,
3 or subject to or at risk of foreclosure; and

4 (B) tenants at risk of or subject to eviction
5 as a result of foreclosure of the property in
6 which such tenant resides.

7 (2) COMMENCE USE WITHIN 90 DAYS.—Any
8 State or local legal organization that receives finan-
9 cial assistance pursuant to this section shall begin
10 using any financial assistance received under this
11 section within 90 days after receipt of the assist-
12 ance.

13 (3) PROHIBITION ON CLASS ACTIONS.—No
14 funds provided to a State or local legal organization
15 under this section may be used to support any class
16 action litigation.

17 (4) LIMITATION ON LEGAL ASSISTANCE.—Legal
18 assistance funded with amounts provided under this
19 section shall be limited to mortgage-related default,
20 eviction, or foreclosure proceedings, without regard
21 to whether such foreclosure is judicial or nonjudicial.

22 (5) EFFECTIVE DATE.—Notwithstanding sec-
23 tion 9116, this subsection shall take effect on the
24 date of the enactment of this Act.

1 (e) LIMITATION ON DISTRIBUTION OF ASSIST-
2 ANCE.—

3 (1) IN GENERAL.—None of the amounts made
4 available under this section shall be distributed to—

5 (A) any organization which has been con-
6 victed for a violation under Federal law relating
7 to an election for Federal office; or

8 (B) any organization which employs appli-
9 cable individuals.

10 (2) DEFINITION OF APPLICABLE INDIVID-
11 UALS.—In this subsection, the term “applicable indi-
12 vidual” means an individual who—

13 (A) is—

14 (i) employed by the organization in a
15 permanent or temporary capacity;

16 (ii) contracted or retained by the or-
17 ganization; or

18 (iii) acting on behalf of, or with the
19 express or apparent authority of, the orga-
20 nization; and

21 (B) has been convicted for a violation
22 under Federal law relating to an election for
23 Federal office.

24 (f) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary

1 \$35,000,000 for each of fiscal years 2009 through 2012
2 for grants under this section.

3 **SEC. 9116. EFFECTIVE DATE.**

4 The amendments made by this subtitle shall apply to
5 transactions consummated on or after the effective date
6 of the regulations specified in section 9109.

7 **SEC. 9117. REPORT BY THE GAO.**

8 (a) REPORT REQUIRED.—The Comptroller General
9 shall conduct a study to determine the effects the enact-
10 ment of this Act will have on the availability and afford-
11 ability of credit for consumers, small businesses, home-
12 buyers, and mortgage lending, including the effect—

13 (1) on the mortgage market for mortgages that
14 are not within the safe harbor provided in the
15 amendments made by this subtitle;

16 (2) on the ability of prospective homebuyers to
17 obtain financing;

18 (3) on the ability of homeowners facing resets
19 or adjustments to refinance—for example, do they
20 have fewer refinancing options due to the unavail-
21 ability of certain loan products that were available
22 before the enactment of this Act;

23 (4) on minorities' ability to access affordable
24 credit compared with other prospective borrowers;

25 (5) on home sales and construction;

1 (6) of extending the rescission right, if any, on
2 adjustable rate loans and its impact on litigation;

3 (7) of State foreclosure laws and, if any, an in-
4 vestor's ability to transfer a property after fore-
5 closure;

6 (8) of expanding the existing provisions of the
7 Home Ownership and Equity Protection Act of
8 1994;

9 (9) of prohibiting prepayment penalties on
10 high-cost mortgages; and

11 (10) of establishing counseling services under
12 the Department of Housing and Urban Development
13 and offered through the Office of Housing Coun-
14 seling.

15 (b) REPORT.—Before the end of the 1-year period be-
16 ginning on the date of the enactment of this Act, the
17 Comptroller General shall submit a report to the Congress
18 containing the findings and conclusions of the Comptroller
19 General with respect to the study conducted pursuant to
20 subsection (a).

21 (c) EXAMINATION RELATED TO CERTAIN CREDIT
22 RISK RETENTION PROVISIONS.—The report required by
23 subsection (b) shall also include an analysis by the Comp-
24 troller General of the effect on the capital reserves and
25 funding of lenders of credit risk retention provisions for

1 non-qualified mortgages, including an analysis of the ex-
2 ceptions and adjustments authorized in section
3 129C(l)(3)(A) of the Truth in Lending Act and a rec-
4 ommendation on whether a uniform standard is needed.

5 (d) ANALYSIS OF CREDIT RISK RETENTION PROVI-
6 SIONS.—The report required by subsection (b) shall also
7 include—

8 (1) an analysis by the Comptroller General of
9 whether the credit risk retention provisions have sig-
10 nificantly reduced risks to the larger credit market
11 of the repackaging and selling of securitized loans on
12 a secondary market; and

13 (2) recommendations to the Congress on adjust-
14 ments that should be made, or additional measures
15 that should be undertaken.

16 **SEC. 9118. STATE ATTORNEY GENERAL ENFORCEMENT AU-**
17 **THORITY.**

18 Section 130(e) of the Truth in Lending Act (15
19 U.S.C. 1640(e)) is amended by striking “section 129 may
20 also” and inserting “section 129, 129B, or 129C of this
21 Act may also”.

1 **Subtitle C—High-Cost Mortgages**

2 **SEC. 9201. DEFINITIONS RELATING TO HIGH-COST MORT-**
3 **GAGES.**

4 (a) HIGH-COST MORTGAGE DEFINED.—Section
5 103(aa) of the Truth in Lending Act (15 U.S.C.
6 1602(aa)) is amended by striking all that precedes para-
7 graph (2) and inserting the following:

8 “(aa) HIGH-COST MORTGAGE.—

9 “(1) DEFINITION.—

10 “(A) IN GENERAL.—The term ‘high-cost
11 mortgage’, and a mortgage referred to in this
12 subsection, means a consumer credit trans-
13 action that is secured by the consumer’s prin-
14 cipal dwelling, other than a reverse mortgage
15 transaction, if—

16 “(i) in the case of a credit transaction
17 secured—

18 “(I) by a first mortgage on the
19 consumer’s principal dwelling, the an-
20 nual percentage rate at consummation
21 of the transaction will exceed by more
22 than 6.5 percentage points (8.5 per-
23 centage points, if the dwelling is per-
24 sonal property and the transaction is
25 for less than \$50,000) the average

1 prime offer rate, as defined in section
2 129C(c)(2)(B), for a comparable
3 transaction; or

4 “(II) by a subordinate or junior
5 mortgage on the consumer’s principal
6 dwelling, the annual percentage rate
7 at consummation of the transaction
8 will exceed by more than 8.5 percent-
9 age points the average prime offer
10 rate, as defined in section
11 129C(c)(2)(B), for a comparable
12 transaction;

13 “(ii) the total points and fees payable
14 in connection with the transaction ex-
15 ceed—

16 “(I) in the case of a transaction
17 for \$20,000 or more, 5 percent of the
18 total transaction amount; or

19 “(II) in the case of a transaction
20 for less than \$20,000, the lesser of 8
21 percent of the total transaction
22 amount or \$1,000 (or such other dol-
23 lar amount as the Board shall pre-
24 scribe by regulation); or

1 “(iii) the credit transaction documents
2 permit the creditor to charge or collect pre-
3 payment fees or penalties more than 36
4 months after the transaction closing or
5 such fees or penalties exceed, in the aggre-
6 gate, more than 2 percent of the amount
7 prepaid.

8 “(B) INTRODUCTORY RATES TAKEN INTO
9 ACCOUNT.—For purposes of subparagraph
10 (A)(i), the annual percentage rate of interest
11 shall be determined based on the following in-
12 terest rate:

13 “(i) In the case of a fixed-rate trans-
14 action in which the annual percentage rate
15 will not vary during the term of the loan,
16 the interest rate in effect on the date of
17 consummation of the transaction.

18 “(ii) In the case of a transaction in
19 which the rate of interest varies solely in
20 accordance with an index, the interest rate
21 determined by adding the index rate in ef-
22 fect on the date of consummation of the
23 transaction to the maximum margin per-
24 mitted at any time during the transaction
25 agreement.

1 “(iii) In the case of any other trans-
2 action in which the rate may vary at any
3 time during the term of the loan for any
4 reason, the interest charged on the trans-
5 action at the maximum rate that may be
6 charged during the term of the trans-
7 action.”.

8 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
9 103(aa)(2) of the Truth in Lending Act (15 U.S.C.
10 1602(aa)(2)) is amended by striking subparagraph (B)
11 and inserting the following new subparagraph:

12 “(B) An increase or decrease under sub-
13 paragraph (A)—

14 “(i) may not result in the number of
15 percentage points referred to in paragraph
16 (1)(A)(i)(I) being less than 6 percentage
17 points or greater than 10 percentage
18 points; and

19 “(ii) may not result in the number of
20 percentage points referred to in paragraph
21 (1)(A)(i)(II) being less than 8 percentage
22 points or greater than 12 percentage
23 points.”.

24 (c) POINTS AND FEES DEFINED.—

1 (1) IN GENERAL.—Section 103(aa)(4) of the
2 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
3 amended—

4 (A) by striking subparagraph (B) and in-
5 serting the following:

6 “(B) all compensation paid directly or indi-
7 rectly by a consumer or creditor to a mortgage
8 originator from any source, including a mort-
9 gage originator that originates a loan in the
10 name of the creditor in a table-funded trans-
11 action;”;

12 (B) in subparagraph (C)(ii), by inserting
13 “except where applied to the charges set forth
14 in section 106(e)(1) where a creditor may re-
15 ceive indirect compensation solely as a result of
16 obtaining distributions of profits from an affili-
17 ated entity based on its ownership interest in
18 compliance with section 8(c)(4) of the Real Es-
19 tate Settlement Procedures Act of 1974” before
20 the semicolon at the end;

21 (C) in subparagraph (C)(iii), by striking “;
22 and” and inserting “, except as provided for in
23 clause (ii);”;

24 (D) by redesignating subparagraph (D) as
25 subparagraph (G); and

1 (E) by inserting after subparagraph (C)
2 the following new subparagraphs:

3 “(D) premiums or other charges payable at
4 or before closing for any credit life, credit dis-
5 ability, credit unemployment, or credit property
6 insurance, or any other accident, loss-of-income,
7 life or health insurance, or any payments di-
8 rectly or indirectly for any debt cancellation or
9 suspension agreement or contract, except that
10 insurance premiums or debt cancellation or sus-
11 pension fees calculated and paid in full on a
12 monthly basis shall not be considered financed
13 by the creditor;

14 “(E) except as provided in subsection (cc),
15 the maximum prepayment fees and penalties
16 which may be charged or collected under the
17 terms of the credit transaction;

18 “(F) all prepayment fees or penalties that
19 are incurred by the consumer if the loan refi-
20 nances a previous loan made or currently held
21 by the same creditor or an affiliate of the cred-
22 itor; and”.

23 (2) CALCULATION OF POINTS AND FEES FOR
24 OPEN-END CONSUMER CREDIT PLANS.—Section

1 103(aa) of the Truth in Lending Act (15 U.S.C.
2 1602(aa)) is amended—

3 (A) by redesignating paragraph (5) as
4 paragraph (6); and

5 (B) by inserting after paragraph (4) the
6 following new paragraph:

7 “(5) CALCULATION OF POINTS AND FEES FOR
8 OPEN-END CONSUMER CREDIT PLANS.—In the case
9 of open-end consumer credit plans, points and fees
10 shall be calculated, for purposes of this section and
11 section 129, by adding the total points and fees
12 known at or before closing, including the maximum
13 prepayment penalties which may be charged or col-
14 lected under the terms of the credit transaction, plus
15 the minimum additional fees the consumer would be
16 required to pay to draw down an amount equal to
17 the total credit line.”.

18 (d) BONA FIDE DISCOUNT LOAN DISCOUNT
19 POINTS.—Section 103 of the Truth in Lending Act (15
20 U.S.C. 1602) is amended by inserting after subsection (cc)
21 (as added by section 101) the following new subsection:

22 “(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-
23 MENT PENALTIES.—For the purposes of determining the
24 amount of points and fees for purposes of subsection (aa),

1 either the amounts described in paragraph (1) or (2) of
2 the following paragraphs, but not both, shall be excluded:

3 “(1) Up to and including 2 bona fide discount
4 points payable by the consumer in connection with
5 the mortgage, but only if the interest rate from
6 which the mortgage’s interest rate will be discounted
7 does not exceed by more than 1 percentage point—

8 “(A) the required net yield for a 90-day
9 standard mandatory delivery commitment for a
10 reasonably comparable loan from either the
11 Federal National Mortgage Association or the
12 Federal Home Loan Mortgage Corporation,
13 whichever is greater; or

14 “(B) if secured by a personal property
15 loan, the average rate on a loan in connection
16 with which insurance is provided under title I
17 of the National Housing Act (12 U.S.C. 1702
18 et seq.).

19 “(2) Unless 2 bona fide discount points have
20 been excluded under paragraph (1), up to and in-
21 cluding 1 bona fide discount point payable by the
22 consumer in connection with the mortgage, but only
23 if the interest rate from which the mortgage’s inter-
24 est rate will be discounted does not exceed by more
25 than 2 percentage points—

1 “(A) the required net yield for a 90-day
2 standard mandatory delivery commitment for a
3 reasonably comparable loan from either the
4 Federal National Mortgage Association or the
5 Federal Home Loan Mortgage Corporation,
6 whichever is greater; or

7 “(B) if secured by a personal property
8 loan, the average rate on a loan in connection
9 with which insurance is provided under title I
10 of the National Housing Act (12 U.S.C. 1702
11 et seq.).

12 “(3) For purposes of paragraph (1), the term
13 ‘bona fide discount points’ means loan discount
14 points which are knowingly paid by the consumer for
15 the purpose of reducing, and which in fact result in
16 a bona fide reduction of, the interest rate or time-
17 price differential applicable to the mortgage.

18 “(4) Paragraphs (1) and (2) shall not apply to
19 discount points used to purchase an interest rate re-
20 duction unless the amount of the interest rate reduc-
21 tion purchased is reasonably consistent with estab-
22 lished industry norms and practices for secondary
23 mortgage market transactions.”.

1 **SEC. 9202. AMENDMENTS TO EXISTING REQUIREMENTS**
2 **FOR CERTAIN MORTGAGES.**

3 (a) PREPAYMENT PENALTY PROVISIONS.—Section
4 129(c)(2) of the Truth in Lending Act (15 U.S.C.
5 1639(c)(2)) is hereby repealed.

6 (b) NO BALLOON PAYMENTS.—Section 129(e) of the
7 Truth in Lending Act (15 U.S.C. 1639(e)) is amended to
8 read as follows:

9 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
10 gage may contain a scheduled payment that is more than
11 twice as large as the average of earlier scheduled pay-
12 ments. This subsection shall not apply when the payment
13 schedule is adjusted to the seasonal or irregular income
14 of the consumer or in the case of a balance due under
15 the customary terms of a reverse mortgage.”.

16 **SEC. 9203. ADDITIONAL REQUIREMENTS FOR CERTAIN**
17 **MORTGAGES.**

18 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN
19 MORTGAGES.—Section 129 of the Truth in Lending Act
20 (15 U.S.C. 1639) is amended—

21 (1) by redesignating subsections (j), (k) and (l)
22 as subsections (n), (o) and (p) respectively; and

23 (2) by inserting after subsection (i) the fol-
24 lowing new subsections:

25 “(j) RECOMMENDED DEFAULT.—No creditor shall
26 recommend or encourage default on an existing loan or

1 other debt prior to and in connection with the closing or
2 planned closing of a high-cost mortgage that refinances
3 all or any portion of such existing loan or debt.

4 “(k) LATE FEES.—

5 “(1) IN GENERAL.—No creditor may impose a
6 late payment charge or fee in connection with a
7 high-cost mortgage—

8 “(A) in an amount in excess of 4 percent
9 of the amount of the payment past due;

10 “(B) unless the loan documents specifically
11 authorize the charge or fee;

12 “(C) before the end of the 15-day period
13 beginning on the date the payment is due, or in
14 the case of a loan on which interest on each in-
15 stallment is paid in advance, before the end of
16 the 30-day period beginning on the date the
17 payment is due; or

18 “(D) more than once with respect to a sin-
19 gle late payment.

20 “(2) COORDINATION WITH SUBSEQUENT LATE
21 FEES.—If a payment is otherwise a full payment for
22 the applicable period and is paid on its due date or
23 within an applicable grace period, and the only delin-
24 quency or insufficiency of payment is attributable to
25 any late fee or delinquency charge assessed on any

1 earlier payment, no late fee or delinquency charge
2 may be imposed on such payment.

3 “(3) FAILURE TO MAKE INSTALLMENT PAY-
4 MENT.—If, in the case of a loan agreement the
5 terms of which provide that any payment shall first
6 be applied to any past due principal balance, the
7 consumer fails to make an installment payment and
8 the consumer subsequently resumes making install-
9 ment payments but has not paid all past due install-
10 ments, the creditor may impose a separate late pay-
11 ment charge or fee for any principal due (without
12 deduction due to late fees or related fees) until the
13 default is cured.

14 “(l) ACCELERATION OF DEBT.—No high-cost mort-
15 gage may contain a provision which permits the creditor
16 to accelerate the indebtedness, except when repayment of
17 the loan has been accelerated by default in payment, or
18 pursuant to a due-on-sale provision, or pursuant to a ma-
19 terial violation of some other provision of the loan docu-
20 ment unrelated to payment schedule.

21 “(m) RESTRICTION ON FINANCING POINTS AND
22 FEES.—No creditor may directly or indirectly finance, in
23 connection with any high-cost mortgage, any of the fol-
24 lowing:

1 “(1) Any prepayment fee or penalty payable by
2 the consumer in a refinancing transaction if the
3 creditor or an affiliate of the creditor is the
4 noteholder of the note being refinanced.

5 “(2) Any points or fees.”.

6 (b) PROHIBITIONS ON EVASIONS.—Section 129 of
7 the Truth in Lending Act (15 U.S.C. 1639) is amended
8 by inserting after subsection (p) (as so redesignated by
9 subsection (a)(1)) the following new subsection:

10 “(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF
11 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
12 creditor may not take any action in connection with a
13 high-cost mortgage—

14 “(1) to structure a loan transaction as an open-
15 end credit plan or another form of loan for the pur-
16 pose and with the intent of evading the provisions of
17 this title; or

18 “(2) to divide any loan transaction into sepa-
19 rate parts for the purpose and with the intent of
20 evading provisions of this title.”.

21 (c) MODIFICATION OR DEFERRAL FEES.—Section
22 129 of the Truth in Lending Act (15 U.S.C. 1639) is
23 amended by inserting after subsection (q) (as added by
24 subsection (b) of this section) the following new sub-
25 section:

1 “(r) MODIFICATION AND DEFERRAL FEES PROHIB-
2 ITED.—

3 “(1) CREDITORS.—A creditor may not charge a
4 consumer any fee to modify, renew, extend, or
5 amend a high-cost mortgage, or to defer any pay-
6 ment due under the terms of such mortgage, unless
7 the modification, renewal, extension or amendment
8 results in a lower annual percentage rate on the
9 mortgage for the consumer and then only if the
10 amount of the fee is comparable to fees imposed for
11 similar transactions in connection with consumer
12 credit transactions that are secured by a consumer’s
13 principal dwelling and are not high-cost mortgages.

14 “(2) THIRD PARTIES.—A third-party may not
15 charge a consumer any fee to—

16 “(A) modify, renew, extend, or amend a
17 high-cost mortgage, or defer any payment due
18 under the terms of such mortgage;

19 “(B) negotiate with a creditor on behalf of
20 a consumer, the modification, renewal, exten-
21 sion, or amendment of a high-cost mortgage; or

22 “(C) negotiate with a creditor on behalf of
23 a consumer, the deferral of any payment due
24 under the terms of such mortgage,

1 unless the modification renewal, extension or amend-
2 ment results in a significantly lower annual percent-
3 age rate on the mortgage, or a significant reduction
4 in the amount of the outstanding principal on the
5 mortgage, for the consumer and then only if the
6 amount of the fee is comparable to fees imposed for
7 similar transactions in connection with consumer
8 credit transactions that are secured by a consumer's
9 principal dwelling and are not high-cost mortgages.

10 “(3) ENFORCEMENT.—Section 130 shall be ap-
11 plied for purposes of paragraph (2) by—

12 “(A) substituting ‘third party’ for
13 ‘creditor’ each place such term appears; and

14 “(B) substituting ‘any fee charged by a
15 third party’ for ‘finance charge’ each place such
16 term appears.”.

17 (d) PAYOFF STATEMENT.—Section 129 of the Truth
18 in Lending Act (15 U.S.C. 1639) is amended by inserting
19 after subsection (r) (as added by subsection (c) of this
20 section) the following new subsection:

21 “(s) PAYOFF STATEMENT.—

22 “(1) FEES.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), no creditor or servicer may
25 charge a fee for informing or transmitting to

1 any person the balance due to pay off the out-
2 standing balance on a high-cost mortgage.

3 “(B) TRANSACTION FEE.—When payoff in-
4 formation referred to in subparagraph (A) is
5 provided by facsimile transmission or by a cou-
6 rier service, a creditor or servicer may charge a
7 processing fee to cover the cost of such trans-
8 mission or service in an amount not to exceed
9 an amount that is comparable to fees imposed
10 for similar services provided in connection with
11 consumer credit transactions that are secured
12 by the consumer’s principal dwelling and are
13 not high-cost mortgages.

14 “(C) FEE DISCLOSURE.—Prior to charging
15 a transaction fee as provided in subparagraph
16 (B), a creditor or servicer shall disclose that
17 payoff balances are available for free pursuant
18 to subparagraph (A).

19 “(D) MULTIPLE REQUESTS.—If a creditor
20 or servicer has provided payoff information re-
21 ferred to in subparagraph (A) without charge,
22 other than the transaction fee allowed by sub-
23 paragraph (B), on 4 occasions during a cal-
24 endar year, the creditor or servicer may there-
25 after charge a reasonable fee for providing such

1 information during the remainder of the cal-
2 endar year.

3 “(2) PROMPT DELIVERY.—Payoff balances shall
4 be provided within 5 business days after receiving a
5 request by a consumer or a person authorized by the
6 consumer to obtain such information.

7 “(3) SERVICES CONSIDERED ASSIGNEE.—For
8 the purposes of this subsection, a servicer shall be
9 considered an assignee under the Truth in Lending
10 Act.”.

11 (e) PRE-LOAN COUNSELING REQUIRED.—Section
12 129 of the Truth in Lending Act (15 U.S.C. 1639) is
13 amended by inserting after subsection (s) (as added by
14 subsection (d) of this section) the following new sub-
15 section:

16 “(t) PRE-LOAN COUNSELING.—

17 “(1) IN GENERAL.—A creditor may not extend
18 credit to a consumer under a high-cost mortgage
19 without first receiving certification from a counselor
20 that is approved by the Secretary of Housing and
21 Urban Development, or at the discretion of the Sec-
22 retary, a State housing finance authority, that the
23 consumer has received counseling on the advisability
24 of the mortgage. Such counselor shall not be em-

1 ployed by the creditor or an affiliate of the creditor
2 or be affiliated with the creditor.

3 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-
4 SELING.—No counselor may certify that a consumer
5 has received counseling on the advisability of the
6 high-cost mortgage unless the counselor can verify
7 that the consumer has received each statement re-
8 quired (in connection with such loan) by this section
9 or the Real Estate Settlement Procedures Act of
10 1974 with respect to the transaction.

11 “(3) REGULATIONS.—The Board may prescribe
12 such regulations as the Board determines to be ap-
13 propriate to carry out the requirements of paragraph
14 (1).”.

15 (f) FLIPPING PROHIBITED.—Section 129 of the
16 Truth in Lending Act (15 U.S.C. 1639) is amended by
17 inserting after subsection (t) (as added by subsection (e))
18 the following new subsection:

19 “(u) FLIPPING.—

20 “(1) IN GENERAL.—No creditor may knowingly
21 or intentionally engage in the unfair act or practice
22 of flipping in connection with a high-cost mortgage.

23 “(2) FLIPPING DEFINED.—For purposes of this
24 subsection, the term ‘flipping’ means the making of
25 a loan or extension of credit in the form a high-cost

1 mortgage to a consumer which refinances an existing
2 mortgage when the new loan or extension of credit
3 does not have reasonable, net tangible benefit (as de-
4 termined in accordance with regulations prescribed
5 under section 129C(b)) to the consumer considering
6 all of the circumstances, including the terms of both
7 the new and the refinanced loans or credit, the cost
8 of the new loan or credit, and the consumer's cir-
9 cumstances.

10 “(v) CORRECTIONS AND UNINTENTIONAL VIOLA-
11 TIONS.—A creditor or assignee in a high cost loan who,
12 when acting in good faith, fails to comply with any re-
13 quirement under this section will not be deemed to have
14 violated such requirement if the creditor or assignee estab-
15 lishes that either—

16 “(1) within 30 days of the loan closing and
17 prior to the institution of any action, the consumer
18 is notified of or discovers the violation, appropriate
19 restitution is made, and whatever adjustments are
20 necessary are made to the loan to either, at the
21 choice of the consumer—

22 “(A) make the loan satisfy the require-
23 ments of this chapter; or

24 “(B) in the case of a high-cost mortgage,
25 change the terms of the loan in a manner bene-

1 ficial to the consumer so that the loan will no
2 longer be a high-cost mortgage; or

3 “(2) within 60 days of the creditor’s discovery
4 or receipt of notification of an unintentional viola-
5 tion or bona fide error as described in subsection (c)
6 and prior to the institution of any action, the con-
7 sumer is notified of the compliance failure, appro-
8 priate restitution is made, and whatever adjustments
9 are necessary are made to the loan to either, at the
10 choice of the consumer—

11 “(A) make the loan satisfy the require-
12 ments of this chapter; or

13 “(B) in the case of a high-cost mortgage,
14 change the terms of the loan in a manner bene-
15 ficial so that the loan will no longer be a high-
16 cost mortgage.”.

17 **SEC. 9204. REGULATIONS.**

18 (a) IN GENERAL.—The Board of Governors of the
19 Federal Reserve System shall publish regulations imple-
20 menting this subtitle and the amendments made by this
21 subtitle in final form before the end of the 6-month period
22 beginning on the date of the enactment of this Act.

23 (b) CONSUMER MORTGAGE EDUCATION.—

24 (1) REGULATIONS.—The Board of Governors of
25 the Federal Reserve System may prescribe regula-

1 tions requiring or encouraging creditors to provide
2 consumer mortgage education to prospective cus-
3 tomers or direct such customers to qualified con-
4 sumer mortgage education or counseling programs
5 in the vicinity of the residence of the consumer.

6 (2) COORDINATION WITH STATE LAW.—No re-
7 quirement established by the Board of Governors of
8 the Federal Reserve System pursuant to paragraph
9 (1) shall be construed as affecting or superseding
10 any requirement under the law of any State with re-
11 spect to consumer mortgage counseling or education.

12 **SEC. 9205. EFFECTIVE DATE.**

13 The amendments made by this subtitle shall take ef-
14 fect at the end of the 6-month period beginning on the
15 date of the enactment of this Act and shall apply to mort-
16 gages referred to in section 103(aa) of the Truth in Lend-
17 ing Act (15 U.S.C. 1602(aa)) for which an application is
18 received by the creditor after the end of such period.

19 **Subtitle D—Office of Housing**
20 **Counseling**

21 **SEC. 9301. SHORT TITLE.**

22 This subtitle may be cited as the “Expand and Pre-
23 serve Home Ownership Through Counseling Act”.

1 **SEC. 9302. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
2 **SELING.**

3 Section 4 of the Department of Housing and Urban
4 Development Act (42 U.S.C. 3533) is amended by adding
5 at the end the following new subsection:

6 “(g) OFFICE OF HOUSING COUNSELING.—

7 “(1) ESTABLISHMENT.—There is established,
8 in the Department, the Office of Housing Coun-
9 seling.

10 “(2) DIRECTOR.—There is established the posi-
11 tion of Director of Housing Counseling. The Direc-
12 tor shall be the head of the Office of Housing Coun-
13 seling and shall be appointed by, and shall report to,
14 the Secretary. Such position shall be a career-re-
15 served position in the Senior Executive Service.

16 “(3) FUNCTIONS.—

17 “(A) IN GENERAL.—The Director shall
18 have primary responsibility within the Depart-
19 ment for all activities and matters relating to
20 homeownership counseling and rental housing
21 counseling, including—

22 “(i) research, grant administration,
23 public outreach, and policy development re-
24 lating to such counseling; and

25 “(ii) establishment, coordination, and
26 administration of all regulations, require-

1 ments, standards, and performance meas-
2 ures under programs and laws adminis-
3 tered by the Department that relate to
4 housing counseling, homeownership coun-
5 seling (including maintenance of homes),
6 mortgage-related counseling (including
7 home equity conversion mortgages and
8 credit protection options to avoid fore-
9 closure), and rental housing counseling, in-
10 cluding the requirements, standards, and
11 performance measures relating to housing
12 counseling.

13 “(B) SPECIFIC FUNCTIONS.—The Director
14 shall carry out the functions assigned to the Di-
15 rector and the Office under this section and any
16 other provisions of law. Such functions shall in-
17 clude establishing rules necessary for—

18 “(i) the counseling procedures under
19 section 106(g)(1) of the Housing and
20 Urban Development Act of 1968 (12
21 U.S.C. 1701x(h)(1));

22 “(ii) carrying out all other functions
23 of the Secretary under section 106(g) of
24 the Housing and Urban Development Act
25 of 1968, including the establishment, oper-

1 ation, and publication of the availability of
2 the toll-free telephone number under para-
3 graph (2) of such section;

4 “(iii) contributing to the preparation
5 and distribution of home buying informa-
6 tion booklets pursuant to section 5 of the
7 Real Estate Settlement Procedures Act of
8 1974 (12 U.S.C. 2604);

9 “(iv) carrying out the certification
10 program under section 106(e) of the Hous-
11 ing and Urban Development Act of 1968
12 (12 U.S.C. 1701x(e));

13 “(v) carrying out the assistance pro-
14 gram under section 106(a)(4) of the Hous-
15 ing and Urban Development Act of 1968,
16 including criteria for selection of applica-
17 tions to receive assistance;

18 “(vi) carrying out any functions re-
19 garding abusive, deceptive, or unscrupulous
20 lending practices relating to residential
21 mortgage loans that the Secretary con-
22 siders appropriate, which shall include con-
23 ducting the study under section 6 of the
24 Expand and Preserve Home Ownership
25 Through Counseling Act;

1 “(vii) providing for operation of the
2 advisory committee established under para-
3 graph (4) of this subsection;

4 “(viii) collaborating with community-
5 based organizations with expertise in the
6 field of housing counseling; and

7 “(ix) providing for the building of ca-
8 pacity to provide housing counseling serv-
9 ices in areas that lack sufficient services,
10 including underdeveloped areas that lack
11 basic water and sewer systems, electricity
12 services, and safe, sanitary housing.

13 “(4) ADVISORY COMMITTEE.—

14 “(A) IN GENERAL.—The Secretary shall
15 appoint an advisory committee to provide advice
16 regarding the carrying out of the functions of
17 the Director.

18 “(B) MEMBERS.—Such advisory committee
19 shall consist of not more than 12 individuals,
20 and the membership of the committee shall
21 equally represent the mortgage and real estate
22 industry, including consumers and housing
23 counseling agencies certified by the Secretary.

24 “(C) TERMS.—Except as provided in sub-
25 paragraph (D), each member of the advisory

1 committee shall be appointed for a term of 3
2 years. Members may be reappointed at the dis-
3 cretion of the Secretary.

4 “(D) TERMS OF INITIAL APPOINTEES.—As
5 designated by the Secretary at the time of ap-
6 pointment, of the members first appointed to
7 the advisory committee, 4 shall be appointed for
8 a term of 1 year and 4 shall be appointed for
9 a term of 2 years.

10 “(E) PROHIBITION OF PAY; TRAVEL EX-
11 PENSES.—Members of the advisory committee
12 shall serve without pay, but shall receive travel
13 expenses, including per diem in lieu of subsist-
14 ence, in accordance with applicable provisions
15 under subchapter I of chapter 57 of title 5,
16 United States Code.

17 “(F) ADVISORY ROLE ONLY.—The advi-
18 sory committee shall have no role in reviewing
19 or awarding housing counseling grants.

20 “(5) SCOPE OF HOMEOWNERSHIP COUN-
21 SELING.—In carrying out the responsibilities of the
22 Director, the Director shall ensure that homeowner-
23 ship counseling provided by, in connection with, or
24 pursuant to any function, activity, or program of the
25 Department addresses the entire process of home-

1 ownership, including the decision to purchase a
 2 home, the selection and purchase of a home, issues
 3 arising during or affecting the period of ownership
 4 of a home (including refinancing, default and fore-
 5 closure, and other financial decisions), and the sale
 6 or other disposition of a home.”.

7 **SEC. 9303. COUNSELING PROCEDURES.**

8 (a) IN GENERAL.—Section 106 of the Housing and
 9 Urban Development Act of 1968 (12 U.S.C. 1701x) is
 10 amended by adding at the end the following new sub-
 11 section:

12 “(g) PROCEDURES AND ACTIVITIES.—

13 “(1) COUNSELING PROCEDURES.—

14 “(A) IN GENERAL.—The Secretary shall
 15 establish, coordinate, and monitor the adminis-
 16 tration by the Department of Housing and
 17 Urban Development of the counseling proce-
 18 dures for homeownership counseling and rental
 19 housing counseling provided in connection with
 20 any program of the Department, including all
 21 requirements, standards, and performance
 22 measures that relate to homeownership and
 23 rental housing counseling.

24 “(B) HOMEOWNERSHIP COUNSELING.—

25 For purposes of this subsection and as used in

1 the provisions referred to in this subparagraph,
2 the term ‘homeownership counseling’ means
3 counseling related to homeownership and resi-
4 dential mortgage loans. Such term includes
5 counseling related to homeownership and resi-
6 dential mortgage loans that is provided pursu-
7 ant to—

8 “(i) section 105(a)(20) of the Housing
9 and Community Development Act of 1974
10 (42 U.S.C. 5305(a)(20));

11 “(ii) in the United States Housing
12 Act of 1937—

13 “(I) section 9(e) (42 U.S.C.
14 1437g(e));

15 “(II) section 8(y)(1)(D) (42
16 U.S.C. 1437f(y)(1)(D));

17 “(III) section 18(a)(4)(D) (42
18 U.S.C. 1437p(a)(4)(D));

19 “(IV) section 23(c)(4) (42 U.S.C.
20 1437u(c)(4));

21 “(V) section 32(e)(4) (42 U.S.C.
22 1437z-4(e)(4));

23 “(VI) section 33(d)(2)(B) (42
24 U.S.C. 1437z-5(d)(2)(B));

1 “(VII) sections 302(b)(6) and
2 303(b)(7) (42 U.S.C. 1437aaa–
3 1(b)(6), 1437aaa–2(b)(7)); and

4 “(VIII) section 304(c)(4) (42
5 U.S.C. 1437aaa–3(c)(4));

6 “(iii) section 302(a)(4) of the Amer-
7 ican Homeownership and Economic Oppor-
8 tunity Act of 2000 (42 U.S.C. 1437f note);

9 “(iv) sections 233(b)(2) and 258(b) of
10 the Cranston-Gonzalez National Affordable
11 Housing Act (42 U.S.C. 12773(b)(2),
12 12808(b));

13 “(v) this section and section 101(e) of
14 the Housing and Urban Development Act
15 of 1968 (12 U.S.C. 1701x, 1701w(e));

16 “(vi) section 220(d)(2)(G) of the Low-
17 Income Housing Preservation and Resident
18 Homeownership Act of 1990 (12 U.S.C.
19 4110(d)(2)(G));

20 “(vii) sections 422(b)(6), 423(b)(7),
21 424(c)(4), 442(b)(6), and 443(b)(6) of the
22 Cranston-Gonzalez National Affordable
23 Housing Act (42 U.S.C. 12872(b)(6),
24 12873(b)(7), 12874(c)(4), 12892(b)(6),
25 and 12893(b)(6));

1 “(viii) section 491(b)(1)(F)(iii) of the
2 McKinney-Vento Homeless Assistance Act
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(ix) sections 202(3) and
5 810(b)(2)(A) of the Native American
6 Housing and Self-Determination Act of
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

8 “(x) in the National Housing Act—

9 “(I) in section 203 (12 U.S.C.
10 1709), the penultimate undesignated
11 paragraph of paragraph (2) of sub-
12 section (b), subsection (c)(2)(A), and
13 subsection (r)(4);

14 “(II) subsections (a) and (c)(3)
15 of section 237 (12 U.S.C. 1715z–2);
16 and

17 “(III) subsections (d)(2)(B) and
18 (m)(1) of section 255 (12 U.S.C.
19 1715z–20);

20 “(xi) section 502(h)(4)(B) of the
21 Housing Act of 1949 (42 U.S.C.
22 1472(h)(4)(B));

23 “(xii) section 508 of the Housing and
24 Urban Development Act of 1970 (12
25 U.S.C. 1701z–7); and

1 “(xiii) section 106 of the Energy Pol-
2 icy Act of 1992 (42 U.S.C. 12712 note).

3 “(C) RENTAL HOUSING COUNSELING.—
4 For purposes of this subsection, the term ‘rent-
5 al housing counseling’ means counseling related
6 to rental of residential property, which may in-
7 clude counseling regarding future homeownership
8 opportunities and providing referrals for
9 renters and prospective renters to entities pro-
10 viding counseling and shall include counseling
11 related to such topics that is provided pursuant
12 to—

13 “(i) section 105(a)(20) of the Housing
14 and Community Development Act of 1974
15 (42 U.S.C. 5305(a)(20));

16 “(ii) in the United States Housing
17 Act of 1937—

18 “(I) section 9(e) (42 U.S.C.
19 1437g(e));

20 “(II) section 18(a)(4)(D) (42
21 U.S.C. 1437p(a)(4)(D));

22 “(III) section 23(c)(4) (42
23 U.S.C. 1437u(c)(4));

24 “(IV) section 32(e)(4) (42 U.S.C.
25 1437z-4(e)(4));

1 “(V) section 33(d)(2)(B) (42
2 U.S.C. 1437z–5(d)(2)(B)); and

3 “(VI) section 302(b)(6) (42
4 U.S.C. 1437aaa–1(b)(6));

5 “(iii) section 233(b)(2) of the Cran-
6 ston-Gonzalez National Affordable Housing
7 Act (42 U.S.C. 12773(b)(2));

8 “(iv) section 106 of the Housing and
9 Urban Development Act of 1968 (12
10 U.S.C. 1701x);

11 “(v) section 422(b)(6) of the Cran-
12 ston-Gonzalez National Affordable Housing
13 Act (42 U.S.C. 12872(b)(6));

14 “(vi) section 491(b)(1)(F)(iii) of the
15 McKinney-Vento Homeless Assistance Act
16 (42 U.S.C. 11408(b)(1)(F)(iii));

17 “(vii) sections 202(3) and
18 810(b)(2)(A) of the Native American
19 Housing and Self-Determination Act of
20 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
21 and

22 “(viii) the rental assistance program
23 under section 8 of the United States Hous-
24 ing Act of 1937 (42 U.S.C. 1437f).

1 “(2) STANDARDS FOR MATERIALS.—The Sec-
2 retary, in consultation with the advisory committee
3 established under subsection (g)(4) of the Depart-
4 ment of Housing and Urban Development Act, shall
5 establish standards for materials and forms to be
6 used, as appropriate, by organizations providing
7 homeownership counseling services, including any re-
8 cipients of assistance pursuant to subsection (a)(4).

9 “(3) MORTGAGE SOFTWARE SYSTEMS.—

10 “(A) CERTIFICATION.—The Secretary shall
11 provide for the certification of various computer
12 software programs for consumers to use in eval-
13 uating different residential mortgage loan pro-
14 posals. The Secretary shall require, for such
15 certification, that the mortgage software sys-
16 tems take into account—

17 “(i) the consumer’s financial situation
18 and the cost of maintaining a home, in-
19 cluding insurance, taxes, and utilities;

20 “(ii) the amount of time the consumer
21 expects to remain in the home or expected
22 time to maturity of the loan; and

23 “(iii) such other factors as the Sec-
24 retary considers appropriate to assist the
25 consumer in evaluating whether to pay

1 points, to lock in an interest rate, to select
2 an adjustable or fixed rate loan, to select
3 a conventional or government-insured or
4 guaranteed loan and to make other choices
5 during the loan application process.

6 If the Secretary determines that available exist-
7 ing software is inadequate to assist consumers
8 during the residential mortgage loan application
9 process, the Secretary shall arrange for the de-
10 velopment by private sector software companies
11 of new mortgage software systems that meet
12 the Secretary's specifications.

13 “(B) USE AND INITIAL AVAILABILITY.—

14 Such certified computer software programs
15 shall be used to supplement, not replace, hous-
16 ing counseling. The Secretary shall provide that
17 such programs are initially used only in connec-
18 tion with the assistance of housing counselors
19 certified pursuant to subsection (e).

20 “(C) AVAILABILITY.—After a period of ini-

21 tial availability under subparagraph (B) as the
22 Secretary considers appropriate, the Secretary
23 shall take reasonable steps to make mortgage
24 software systems certified pursuant to this
25 paragraph widely available through the Internet

1 and at public locations, including public librar-
2 ies, senior-citizen centers, public housing sites,
3 offices of public housing agencies that admin-
4 ister rental housing assistance vouchers, and
5 housing counseling centers.

6 “(D) BUDGET COMPLIANCE.—This para-
7 graph shall be effective only to the extent that
8 amounts to carry out this paragraph are made
9 available in advance in appropriations Acts.

10 “(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
11 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—

12 “(A) IN GENERAL.—The Director of Hous-
13 ing Counseling shall develop, implement, and
14 conduct national public service multimedia cam-
15 paigns designed to make persons facing mort-
16 gage foreclosure, persons considering a
17 subprime mortgage loan to purchase a home, el-
18 derly persons, persons who face language bar-
19 riers, low-income persons, minorities, and other
20 potentially vulnerable consumers aware that it
21 is advisable, before seeking or maintaining a
22 residential mortgage loan, to obtain homeowner-
23 ship counseling from an unbiased and reliable
24 sources and that such homeownership coun-
25 seling is available, including through programs

1 sponsored by the Secretary of Housing and
2 Urban Development.

3 “(B) CONTACT INFORMATION.—Each seg-
4 ment of the multimedia campaign under sub-
5 paragraph (A) shall publicize the toll-free tele-
6 phone number and website of the Department
7 of Housing and Urban Development through
8 which persons seeking housing counseling can
9 locate a housing counseling agency in their
10 State that is certified by the Secretary of Hous-
11 ing and Urban Development and can provide
12 advice on buying a home, renting, defaults,
13 foreclosures, credit issues, and reverse mort-
14 gages.

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There are authorized to be appro-
17 priated to the Secretary, not to exceed
18 \$3,000,000 for fiscal years 2009, 2010, and
19 2011, for the development, implementation, and
20 conduct of national public service multimedia
21 campaigns under this paragraph.

22 “(D) FORECLOSURE RESCUE EDUCATION
23 PROGRAMS.—

24 “(i) IN GENERAL.—Ten percent of
25 any funds appropriated pursuant to the

1 authorization under subparagraph (C)
2 shall be used by the Director of Housing
3 Counseling to conduct an education pro-
4 gram in areas that have a high density of
5 foreclosure. Such program shall involve di-
6 rect mailings to persons living in such
7 areas describing—

8 “(I) tips on avoiding foreclosure
9 rescue scams;

10 “(II) tips on avoiding predatory
11 lending mortgage agreements;

12 “(III) tips on avoiding for-profit
13 foreclosure counseling services; and

14 “(IV) local counseling resources
15 that are approved by the Department
16 of Housing and Urban Development.

17 “(ii) PROGRAM EMPHASIS.—In con-
18 ducting the education program described
19 under clause (i), the Director of Housing
20 Counseling shall also place an emphasis on
21 serving communities that have a high per-
22 centage of retirement communities or a
23 high percentage of low-income minority
24 communities.

1 “(iii) TERMS DEFINED.—For pur-
2 poses of this subparagraph:

3 “(I) HIGH DENSITY OF FORE-
4 CLOSURES.—An area has a ‘high den-
5 sity of foreclosures’ if such area is one
6 of the metropolitan statistical areas
7 (as that term is defined by the Direc-
8 tor of the Office of Management and
9 Budget) with the highest home fore-
10 closure rates.

11 “(II) HIGH PERCENTAGE OF RE-
12 TIREMENT COMMUNITIES.—An area
13 has a ‘high percentage of retirement
14 communities’ if such area is one of
15 the metropolitan statistical areas (as
16 that term is defined by the Director of
17 the Office of Management and Budg-
18 et) with the highest percentage of
19 residents aged 65 or older.

20 “(III) HIGH PERCENTAGE OF
21 LOW-INCOME MINORITY COMMU-
22 NITIES.—An area has a ‘high percent-
23 age of low-income minority commu-
24 nities’ if such area contains a higher-
25 than-normal percentage of residents

1 who are both minorities and low-in-
2 come, as defined by the Director of
3 Housing Counseling.

4 “(5) EDUCATION PROGRAMS.—The Secretary
5 shall provide advice and technical assistance to
6 States, units of general local government, and non-
7 profit organizations regarding the establishment and
8 operation of, including assistance with the develop-
9 ment of content and materials for, educational pro-
10 grams to inform and educate consumers, particularly
11 those most vulnerable with respect to residential
12 mortgage loans (such as elderly persons, persons
13 facing language barriers, low-income persons, mi-
14 norities, and other potentially vulnerable con-
15 sumers), regarding home mortgages, mortgage refi-
16 nancing, home equity loans, home repair loans, and
17 where appropriate by region, any requirements and
18 costs associated with obtaining flood or other dis-
19 aster-specific insurance coverage.”.

20 (b) CONFORMING AMENDMENTS TO GRANT PRO-
21 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
22 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
23 Urban Development Act of 1968 (12 U.S.C.
24 1701x(c)(5)(A)(ii)) is amended—

1 (1) in subclause (III), by striking “and” at the
2 end;

3 (2) in subclause (IV) by striking the period at
4 the end and inserting “; and”; and

5 (3) by inserting after subclause (IV) the fol-
6 lowing new subclause:

7 “(V) notify the housing or mort-
8 gage applicant of the availability of
9 mortgage software systems provided
10 pursuant to subsection (g)(3).”.

11 **SEC. 9304. GRANTS FOR HOUSING COUNSELING ASSIST-**
12 **ANCE.**

13 Section 106(a) of the Housing and Urban Develop-
14 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended
15 by adding at the end the following new paragraph:

16 “(4) HOMEOWNERSHIP AND RENTAL COUNSELING
17 ASSISTANCE.—

18 “(A) IN GENERAL.—The Secretary shall make
19 financial assistance available under this paragraph
20 to HUD-approved housing counseling agencies and
21 State housing finance agencies.

22 “(B) QUALIFIED ENTITIES.—The Secretary
23 shall establish standards and guidelines for eligibility
24 of organizations (including governmental and non-

1 profit organizations) to receive assistance under this
2 paragraph, in accordance with subparagraph (D).

3 “(C) DISTRIBUTION.—Assistance made avail-
4 able under this paragraph shall be distributed in a
5 manner that encourages efficient and successful
6 counseling programs and that ensures adequate dis-
7 tribution of amounts for rural areas having tradi-
8 tionally low levels of access to such counseling serv-
9 ices, including areas with insufficient access to the
10 Internet. In distributing such assistance, the Sec-
11 retary may give priority consideration to entities
12 serving areas with the highest home foreclosure
13 rates.

14 “(D) LIMITATION ON DISTRIBUTION OF ASSIST-
15 ANCE.—

16 “(i) IN GENERAL.—None of the amounts
17 made available under this paragraph shall be
18 distributed to—

19 “(I) any organization which has been
20 convicted for a violation under Federal law
21 relating to an election for Federal office; or

22 “(II) any organization which employs
23 applicable individuals.

1 “(ii) DEFINITION OF APPLICABLE INDIVID-
2 UALS.—In this subparagraph, the term ‘appli-
3 cable individual’ means an individual who—

4 “(I) is—

5 “(aa) employed by the organiza-
6 tion in a permanent or temporary ca-
7 pacity;

8 “(bb) contracted or retained by
9 the organization; or

10 “(cc) acting on behalf of, or with
11 the express or apparent authority of,
12 the organization; and

13 “(II) has been convicted for a viola-
14 tion under Federal law relating to an elec-
15 tion for Federal office.

16 “(E) GRANTMAKING PROCESS.—In making as-
17 sistance available under this paragraph, the Sec-
18 retary shall consider appropriate ways of stream-
19 lining and improving the processes for grant applica-
20 tion, review, approval, and award.

21 “(F) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated
23 \$45,000,000 for each of fiscal years 2009 through
24 2012 for—

1 “(i) the operations of the Office of Hous-
 2 ing Counseling of the Department of Housing
 3 and Urban Development;

4 “(ii) the responsibilities of the Director of
 5 Housing Counseling under paragraphs (2)
 6 through (5) of subsection (g); and

7 “(iii) assistance pursuant to this para-
 8 graph for entities providing homeownership and
 9 rental counseling.”.

10 **SEC. 9305. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
 11 **SELORS UNDER HUD PROGRAMS.**

12 Section 106(e) of the Housing and Urban Develop-
 13 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

14 (1) by striking paragraph (1) and inserting the
 15 following new paragraph:

16 “(1) REQUIREMENT FOR ASSISTANCE.—An or-
 17 ganization may not receive assistance for counseling
 18 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
 19 (c), or (d) of this section, or under section 101(e),
 20 unless the organization, or the individuals through
 21 which the organization provides such counseling, has
 22 been certified by the Secretary under this subsection
 23 as competent to provide such counseling.”;

24 (2) in paragraph (2)—

1 (A) by inserting “and for certifying organi-
2 zations” before the period at the end of the
3 first sentence; and

4 (B) in the second sentence by striking “for
5 certification” and inserting “, for certification
6 of an organization, that each individual through
7 which the organization provides counseling shall
8 demonstrate, and, for certification of an indi-
9 vidual,”;

10 (3) in paragraph (3), by inserting “organiza-
11 tions and” before “individuals”;

12 (4) by redesignating paragraph (3) as para-
13 graph (5); and

14 (5) by inserting after paragraph (2) the fol-
15 lowing new paragraphs:

16 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
17 Any homeownership counseling or rental housing
18 counseling (as such terms are defined in subsection
19 (g)(1)) required under, or provided in connection
20 with, any program administered by the Department
21 of Housing and Urban Development shall be pro-
22 vided only by organizations or counselors certified by
23 the Secretary under this subsection as competent to
24 provide such counseling.

1 “(4) OUTREACH.—The Secretary shall take
2 such actions as the Secretary considers appropriate
3 to ensure that individuals and organizations pro-
4 viding homeownership or rental housing counseling
5 are aware of the certification requirements and
6 standards of this subsection and of the training and
7 certification programs under subsection (f).”.

8 **SEC. 9306. STUDY OF DEFAULTS AND FORECLOSURES.**

9 The Secretary of Housing and Urban Development
10 shall conduct an extensive study of the root causes of de-
11 fault and foreclosure of home loans, using as much empir-
12 ical data as are available. The study shall also examine
13 the role of escrow accounts in helping prime and nonprime
14 borrowers to avoid defaults and foreclosures, and the role
15 of computer registries of mortgages, including those used
16 for trading mortgage loans. Not later than 12 months
17 after the date of the enactment of this Act, the Secretary
18 shall submit to the Congress a preliminary report regard-
19 ing the study. Not later than 24 months after such date
20 of enactment, the Secretary shall submit a final report re-
21 garding the results of the study, which shall include any
22 recommended legislation relating to the study, and rec-
23 ommendations for best practices and for a process to iden-
24 tify populations that need counseling the most.

1 **SEC. 9307. DEFAULT AND FORECLOSURE DATABASE.**

2 (a) ESTABLISHMENT.—The Secretary of Housing
3 and Urban Development, in consultation with the Federal
4 agencies responsible for regulation of banking and finan-
5 cial institutions involved in residential mortgage lending
6 and servicing, shall establish and maintain a database of
7 information on foreclosures and defaults on mortgage
8 loans for one- to four-unit residential properties and shall
9 make such information publicly available.

10 (b) CENSUS TRACT DATA.—Information in the data-
11 base shall be collected, aggregated, and made available on
12 a census tract basis.

13 (c) REQUIREMENTS.—Information collected and
14 made available through the database shall include—

15 (1) the number and percentage of such mort-
16 gage loans that are delinquent by more than 30
17 days;

18 (2) the number and percentage of such mort-
19 gage loans that are delinquent by more than 90
20 days;

21 (3) the number and percentage of such prop-
22 erties that are real estate-owned;

23 (4) number and percentage of such mortgage
24 loans that are in the foreclosure process;

25 (5) the number and percentage of such mort-
26 gage loans that have an outstanding principal obli-

1 gation amount that is greater than the value of the
2 property for which the loan was made; and

3 (6) such other information as the Secretary
4 considers appropriate.

5 **SEC. 9308. DEFINITIONS FOR COUNSELING-RELATED PRO-**
6 **GRAMS.**

7 Section 106 of the Housing and Urban Development
8 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
9 ceding provisions of this subtitle, is further amended by
10 adding at the end the following new subsection:

11 “(h) DEFINITIONS.—For purposes of this section:

12 “(1) NONPROFIT ORGANIZATION.—The term
13 ‘nonprofit organization’ has the meaning given such
14 term in section 104(5) of the Cranston-Gonzalez Na-
15 tional Affordable Housing Act (42 U.S.C.
16 12704(5)), except that subparagraph (D) of such
17 section shall not apply for purposes of this section.

18 “(2) STATE.—The term ‘State’ means each of
19 the several States, the Commonwealth of Puerto
20 Rico, the District of Columbia, the Commonwealth
21 of the Northern Mariana Islands, Guam, the Virgin
22 Islands, American Samoa, the Trust Territories of
23 the Pacific, or any other possession of the United
24 States.

1 “(3) UNIT OF GENERAL LOCAL GOVERN-
2 MENT.—The term ‘unit of general local government’
3 means any city, county, parish, town, township, bor-
4 ough, village, or other general purpose political sub-
5 division of a State.

6 “(4) HUD-APPROVED COUNSELING AGENCY.—
7 The term ‘HUD-approved counseling agency’ means
8 a private or public nonprofit organization that is—

9 “(A) exempt from taxation under section
10 501(c) of the Internal Revenue Code of 1986;
11 and

12 “(B) certified by the Secretary to provide
13 housing counseling services.

14 “(5) STATE HOUSING FINANCE AGENCY.—The
15 term ‘State housing finance agency’ means any pub-
16 lic body, agency, or instrumentality specifically cre-
17 ated under State statute that is authorised to fi-
18 nance activities designed to provide housing and re-
19 lated facilities throughout an entire State through
20 land acquisition, construction, or rehabilitation.”.

21 **SEC. 9309. ACCOUNTABILITY AND TRANSPARENCY FOR**
22 **GRANT RECIPIENTS.**

23 Section 106 of the Housing and Urban Development
24 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-

1 ceding provisions of this subtitle, is further amended by
2 adding at the end the following:

3 “(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED
4 ASSISTANCE.—

5 “(1) TRACKING OF FUNDS.—The Secretary
6 shall—

7 “(A) develop and maintain a system to en-
8 sure that any organization or entity that re-
9 ceives any covered assistance uses all amounts
10 of covered assistance in accordance with this
11 section or section 9115 of the Mortgage Reform
12 and Anti-Predatory Lending Act, as applicable,
13 the regulations issued under this section or
14 such section 9115, as applicable, and any re-
15 quirements or conditions under which such
16 amounts were provided; and

17 “(B) require any organization or entity, as
18 a condition of receipt of any covered assistance,
19 to agree to comply with such requirements re-
20 garding covered assistance as the Secretary
21 shall establish, which shall include—

22 “(i) appropriate periodic financial and
23 grant activity reporting, record retention,
24 and audit requirements for the duration of
25 the covered assistance to the organization

1 or entity to ensure compliance with the
2 limitations and requirements of this section
3 or section 9115 of the Mortgage Reform
4 and Anti-Predatory Lending Act, as appli-
5 cable, the regulations under this section or
6 such section 9115, as applicable, and any
7 requirements or conditions under which
8 such amounts were provided; and

9 “(ii) any other requirements that the
10 Secretary determines are necessary to en-
11 sure appropriate administration and com-
12 pliance.

13 “(2) MISUSE OF FUNDS.—If any organization
14 or entity that receives any covered assistance is de-
15 termined by the Secretary to have used any covered
16 assistance in a manner that is materially in violation
17 of this section or section 9115 of the Mortgage Re-
18 form and Anti-Predatory Lending Act, as applicable,
19 the regulations issued under this section or such sec-
20 tion 9115, as applicable, or any requirements or con-
21 ditions under which such assistance was provided—

22 “(A) the Secretary shall require that, with-
23 in 12 months after the determination of such
24 misuse, the organization or entity shall reim-
25 burse the Secretary for such misused amounts

1 and return to the Secretary any such amounts
 2 that remain unused or uncommitted for use;
 3 and

4 “(B) such organization or entity shall be
 5 ineligible, at any time after such determination,
 6 to apply for or receive any further covered as-
 7 sistance.

8 The remedies under this paragraph are in addition
 9 to any other remedies that may be available under
 10 law.

11 “(3) COVERED ASSISTANCE.—For purposes of
 12 this subsection, the term ‘covered assistance’ means
 13 any grant or other financial assistance provided
 14 under—

15 “(A) this section; or

16 “(B) section 9115 of the Mortgage Reform
 17 and Anti-Predatory Lending Act.”.

18 **SEC. 9310. UPDATING AND SIMPLIFICATION OF MORTGAGE**
 19 **INFORMATION BOOKLET.**

20 Section 5 of the Real Estate Settlement Procedures
 21 Act of 1974 (12 U.S.C. 2604) is amended—

22 (1) in the section heading, by striking “SPE-
 23 CIAL” and inserting “HOME BUYING”;

24 (2) by striking subsections (a) and (b) and in-
 25 serting the following new subsections:

1 “(a) PREPARATION AND DISTRIBUTION.—The Direc-
2 tor of the Consumer Financial Protection Agency (here-
3 after in this section referred to as the ‘Director’) shall pre-
4 pare, at least once every 5 years, a booklet to help con-
5 sumers applying for federally related mortgage loans to
6 understand the nature and costs of real estate settlement
7 services. The Director shall prepare the booklet in various
8 languages and cultural styles, as the Director determines
9 to be appropriate, so that the booklet is understandable
10 and accessible to homebuyers of different ethnic and cul-
11 tural backgrounds. The Director shall distribute such
12 booklets to all lenders that make federally related mort-
13 gage loans. The Director shall also distribute to such lend-
14 ers lists, organized by location, of homeownership coun-
15 selors certified under section 106(e) of the Housing and
16 Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for
17 use in complying with the requirement under subsection
18 (c) of this section.

19 “(b) CONTENTS.—Each booklet shall be in such form
20 and detail as the Director shall prescribe and, in addition
21 to such other information as the Director may provide,
22 shall include in plain and understandable language the fol-
23 lowing information:

24 “(1) A description and explanation of the na-
25 ture and purpose of the costs incident to a real es-

1 tate settlement or a federally related mortgage loan.

2 The description and explanation shall provide gen-
3 eral information about the mortgage process as well
4 as specific information concerning, at a minimum—

5 “(A) balloon payments;

6 “(B) prepayment penalties;

7 “(C) the advantages of prepayment; and

8 “(D) the trade-off between closing costs
9 and the interest rate over the life of the loan.

10 “(2) An explanation and sample of the uniform
11 settlement statement required by section 4.

12 “(3) A list and explanation of lending practices,
13 including those prohibited by the Truth in Lending
14 Act or other applicable Federal law, and of other un-
15 fair practices and unreasonable or unnecessary
16 charges to be avoided by the prospective buyer with
17 respect to a real estate settlement.

18 “(4) A list and explanation of questions a con-
19 sumer obtaining a federally related mortgage loan
20 should ask regarding the loan, including whether the
21 consumer will have the ability to repay the loan,
22 whether the consumer sufficiently shopped for the
23 loan, whether the loan terms include prepayment
24 penalties or balloon payments, and whether the loan
25 will benefit the borrower.

1 “(5) An explanation of the right of rescission as
2 to certain transactions provided by sections 125 and
3 129 of the Truth in Lending Act.

4 “(6) A brief explanation of the nature of a vari-
5 able rate mortgage and a reference to the booklet
6 entitled ‘Consumer Handbook on Adjustable Rate
7 Mortgages’, published by the Director, or to any
8 suitable substitute of such booklet that the Director
9 may subsequently adopt pursuant to such section.

10 “(7) A brief explanation of the nature of a
11 home equity line of credit and a reference to the
12 pamphlet required to be provided under section
13 127A of the Truth in Lending Act.

14 “(8) Information about homeownership coun-
15 seling services made available pursuant to section
16 106(a)(4) of the Housing and Urban Development
17 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
18 ommendation that the consumer use such services,
19 and notification that a list of certified providers of
20 homeownership counseling in the area, and their
21 contact information, is available.

22 “(9) An explanation of the nature and purpose
23 of escrow accounts when used in connection with
24 loans secured by residential real estate and the re-

1 requirements under section 10 of this Act regarding
2 such accounts.

3 “(10) An explanation of the choices available to
4 buyers of residential real estate in selecting persons
5 to provide necessary services incidental to a real es-
6 tate settlement.

7 “(11) An explanation of a consumer’s respon-
8 sibilities, liabilities, and obligations in a mortgage
9 transaction.

10 “(12) An explanation of the nature and purpose
11 of real estate appraisals, including the difference be-
12 tween an appraisal and a home inspection.

13 “(13) Notice that the Office of Housing of the
14 Department of Housing and Urban Development has
15 made publicly available a brochure regarding loan
16 fraud and a World Wide Web address and toll-free
17 telephone number for obtaining the brochure.

18 The booklet prepared pursuant to this section shall take
19 into consideration differences in real estate settlement pro-
20 cedures that may exist among the several States and terri-
21 tories of the United States and among separate political
22 subdivisions within the same State and territory.”;

23 (3) in subsection (c), by inserting at the end
24 the following new sentence: “Each lender shall also
25 include with the booklet a reasonably complete or

1 updated list of homeownership counselors who are
2 certified pursuant to section 106(e) of the Housing
3 and Urban Development Act of 1968 (12 U.S.C.
4 1701x(e)) and located in the area of the lender.”;
5 and

6 (4) in subsection (d), by inserting after the pe-
7 riod at the end of the first sentence the following:
8 “The lender shall provide the HUD-issued booklet in
9 the version that is most appropriate for the person
10 receiving it.”.

11 **SEC. 9311. HOME INSPECTION COUNSELING.**

12 (a) PUBLIC OUTREACH.—

13 (1) IN GENERAL.—The Secretary of Housing
14 and Urban Development (in this section referred to
15 as the “Secretary”) shall take such actions as may
16 be necessary to inform potential homebuyers of the
17 availability and importance of obtaining an inde-
18 pendent home inspection. Such actions shall in-
19 clude—

20 (A) publication of the HUD/FHA form
21 HUD 92564–CN entitled “For Your Protec-
22 tion: Get a Home Inspection”, in both English
23 and Spanish languages;

24 (B) publication of the HUD/FHA booklet
25 entitled “For Your Protection: Get a Home In-

1 spection”, in both English and Spanish lan-
2 guages;

3 (C) development and publication of a HUD
4 booklet entitled “For Your Protection—Get a
5 Home Inspection” that does not reference
6 FHA-insured homes, in both English and Span-
7 ish languages; and

8 (D) publication of the HUD document en-
9 titled “Ten Important Questions To Ask Your
10 Home Inspector”, in both English and Spanish
11 languages.

12 (2) AVAILABILITY.—The Secretary shall make
13 the materials specified in paragraph (1) available for
14 electronic access and, where appropriate, inform po-
15 tential homebuyers of such availability through home
16 purchase counseling public service announcements
17 and toll-free telephone hotlines of the Department of
18 Housing and Urban Development. The Secretary
19 shall give special emphasis to reaching first-time and
20 low-income homebuyers with these materials and ef-
21 forts.

22 (3) UPDATING.—The Secretary may periodi-
23 cally update and revise such materials, as the Sec-
24 retary determines to be appropriate.

1 (b) REQUIREMENT FOR FHA-APPROVED LEND-
2 ERS.—Each mortgagee approved for participation in the
3 mortgage insurance programs under title II of the Na-
4 tional Housing Act shall provide prospective homebuyers,
5 at first contact, whether upon pre-qualification, pre-ap-
6 proval, or initial application, the materials specified in
7 subparagraphs (A), (B), and (D) of subsection (a)(1).

8 (c) REQUIREMENTS FOR HUD-APPROVED COUN-
9 SELING AGENCIES.—Each counseling agency certified
10 pursuant by the Secretary to provide housing counseling
11 services shall provide each of their clients, as part of the
12 home purchase counseling process, the materials specified
13 in subparagraphs (C) and (D) of subsection (a)(1).

14 (d) TRAINING.—Training provided the Department
15 of Housing and Urban Development for housing coun-
16 seling agencies, whether such training is provided directly
17 by the Department or otherwise, shall include—

18 (1) providing information on counseling poten-
19 tial homebuyers of the availability and importance of
20 getting an independent home inspection;

21 (2) providing information about the home in-
22 spection process, including the reasons for specific
23 inspections such as radon and lead-based paint test-
24 ing;

1 (3) providing information about advising poten-
2 tial homebuyers on how to locate and select a quali-
3 fied home inspector; and

4 (4) review of home inspection public outreach
5 materials of the Department.

6 **SEC. 9312. WARNINGS TO HOMEOWNERS OF FORECLOSURE**
7 **RESCUE SCAMS.**

8 (a) ASSISTANCE TO NRC.—Notwithstanding any
9 other provision of law, of any amounts made available for
10 any fiscal year pursuant to section 106(a)(4)(F) of the
11 Housing and Urban Development Act of 1968 (12 U.S.C.
12 1701x(a)(4)(F)) (as added by section 9304 of this title),
13 10 percent shall be used only for assistance to the Neigh-
14 borhood Reinvestment Corporation for activities, in con-
15 sultation with servicers of residential mortgage loans, to
16 provide notice to borrowers under such loans who are de-
17 linquent with respect to payments due under such loans
18 that makes such borrowers aware of the dangers of fraud-
19 ulent activities associated with foreclosure.

20 (b) NOTICE.—The Neighborhood Reinvestment Cor-
21 poration, in consultation with servicers of residential mort-
22 gage loans, shall use the amounts provided pursuant to
23 subsection (a) to carry out activities to inform borrowers
24 under residential mortgage loans—

1 (1) that the foreclosure process is complex and
2 can be confusing;

3 (2) that the borrower may be approached dur-
4 ing the foreclosure process by persons regarding sav-
5 ing their home and they should use caution in any
6 such dealings;

7 (3) that there are Federal Government and
8 nonprofit agencies that may provide information
9 about the foreclosure process, including the Depart-
10 ment of Housing and Urban Development;

11 (4) that they should contact their lender imme-
12 diately, contact the Department of Housing and
13 Urban Development to find a housing counseling
14 agency certified by the Department to assist in
15 avoiding foreclosure, or visit the Department's
16 website regarding tips for avoiding foreclosure; and

17 (5) of the telephone number of the loan servicer
18 or successor, the telephone number of the Depart-
19 ment of Housing and Urban Development housing
20 counseling line, and the Uniform Resource Locators
21 (URLs) for the Department of Housing and Urban
22 Development Web sites for housing counseling and
23 for tips for avoiding foreclosure.

1 **Subtitle E—Mortgage Servicing**

2 **SEC. 9401. ESCROW AND IMPOUND ACCOUNTS RELATING**
3 **TO CERTAIN CONSUMER CREDIT TRANS-**
4 **ACTIONS.**

5 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
6 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
7 after section 129C (as added by section 9101) the fol-
8 lowing new section:

9 **“SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING**
10 **TO CERTAIN CONSUMER CREDIT TRANS-**
11 **ACTIONS.**

12 “(a) IN GENERAL.—Except as provided in subsection
13 (b), (c), or (d) , a creditor, in connection with the forma-
14 tion or consummation of a consumer credit transaction se-
15 cured by a first lien on the principal dwelling of the con-
16 sumer, other than a consumer credit transaction under an
17 open end credit plan or a reverse mortgage, shall establish,
18 before the consummation of such transaction, an escrow
19 or impound account for the payment of taxes and hazard
20 insurance, and, if applicable, flood insurance, mortgage in-
21 surance, ground rents, and any other required periodic
22 payments or premiums with respect to the property or the
23 loan terms, as provided in, and in accordance with, this
24 section.

1 “(b) WHEN REQUIRED.—No impound, trust, or other
2 type of account for the payment of property taxes, insur-
3 ance premiums, or other purposes relating to the property
4 may be required as a condition of a real property sale con-
5 tract or a loan secured by a first deed of trust or mortgage
6 on the principal dwelling of the consumer, other than a
7 consumer credit transaction under an open end credit plan
8 or a reverse mortgage, except when—

9 “(1) any such impound, trust, or other type of
10 escrow or impound account for such purposes is re-
11 quired by Federal or State law;

12 “(2) a loan is made, guaranteed, or insured by
13 a State or Federal governmental lending or insuring
14 agency;

15 “(3) the transaction is secured by a first mort-
16 gage or lien on the consumer’s principal dwelling
17 having an original principal obligation amount
18 that—

19 “(A) does not exceed the amount of the
20 maximum limitation on the original principal
21 obligation of mortgage in effect for a residence
22 of the applicable size, as of the date such inter-
23 est rate set, pursuant to the sixth sentence of
24 section 305(a)(2) the Federal Home Loan
25 Mortgage Corporation Act (12 U.S.C.

1 1454(a)(2)), and the annual percentage rate
2 will exceed the average prime offer rate for a
3 comparable transaction by 1.5 or more percent-
4 age points; or

5 “(B) exceeds the amount of the maximum
6 limitation on the original principal obligation of
7 mortgage in effect for a residence of the appli-
8 cable size, as of the date such interest rate set,
9 pursuant to the sixth sentence of section
10 305(a)(2) the Federal Home Loan Mortgage
11 Corporation Act (12 U.S.C. 1454(a)(2)), and
12 the annual percentage rate will exceed the aver-
13 age prime offer rate for a comparable trans-
14 action by 2.5 or more percentage points; or
15 “(4) so required pursuant to regulation.

16 “(c) DURATION OF MANDATORY ESCROW OR IM-
17 POUND ACCOUNT.—An escrow or impound account estab-
18 lished pursuant to subsection (b), shall remain in existence
19 for a minimum period of 5 years, beginning with the date
20 of the consummation of the loan, and until such borrower
21 has sufficient equity in the dwelling securing the consumer
22 credit transaction so as to no longer be required to main-
23 tain private mortgage insurance, or such other period as
24 may be provided in regulations to address situations such

1 as borrower delinquency, unless the underlying mortgage
2 establishing the account is terminated.

3 “(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY
4 SHARES IN A COOPERATIVE AND FOR CERTAIN CONDO-
5 MINUM UNITS.—Escrow accounts need not be established
6 for loans secured by shares in a cooperative. Insurance
7 premiums need not be included in escrow accounts for
8 loans secured by condominium units, where the condo-
9 minium association has an obligation to the condominium
10 unit owners to maintain a master policy insuring condo-
11 minium units.

12 “(e) CLARIFICATION ON ESCROW ACCOUNTS FOR
13 LOANS NOT MEETING STATUTORY TEST.—For mort-
14 gages not covered by the requirements of subsection (b),
15 no provision of this section shall be construed as pre-
16 cluding the establishment of an impound, trust, or other
17 type of account for the payment of property taxes, insur-
18 ance premiums, or other purposes relating to the prop-
19 erty—

20 “(1) on terms mutually agreeable to the parties
21 to the loan;

22 “(2) at the discretion of the lender or servicer,
23 as provided by the contract between the lender or
24 servicer and the borrower; or

1 “(3) pursuant to the requirements for the
2 escrowing of flood insurance payments for regulated
3 lending institutions in section 102(d) of the Flood
4 Disaster Protection Act of 1973.

5 “(f) ADMINISTRATION OF MANDATORY ESCROW OR
6 IMPOUND ACCOUNTS.—

7 “(1) IN GENERAL.—Except as may otherwise
8 be provided for in this title or in regulations pre-
9 scribed by the Board, escrow or impound accounts
10 established pursuant to subsection (b) shall be estab-
11 lished in a federally insured depository institution.

12 “(2) ADMINISTRATION.—Except as provided in
13 this section or regulations prescribed under this sec-
14 tion, an escrow or impound account subject to this
15 section shall be administered in accordance with—

16 “(A) the Real Estate Settlement Proce-
17 dures Act of 1974 and regulations prescribed
18 under such Act;

19 “(B) the Flood Disaster Protection Act of
20 1973 and regulations prescribed under such
21 Act; and

22 “(C) the law of the State, if applicable,
23 where the real property securing the consumer
24 credit transaction is located.

1 “(3) APPLICABILITY OF PAYMENT OF INTER-
2 EST.—If prescribed by applicable State or Federal
3 law, each creditor shall pay interest to the consumer
4 on the amount held in any impound, trust, or escrow
5 account that is subject to this section in the manner
6 as prescribed by that applicable State or Federal
7 law.

8 “(4) PENALTY COORDINATION WITH RESPA.—
9 Any action or omission on the part of any person
10 which constitutes a violation of the Real Estate Set-
11 tlement Procedures Act of 1974 or any regulation
12 prescribed under such Act for which the person has
13 paid any fine, civil money penalty, or other damages
14 shall not give rise to any additional fine, civil money
15 penalty, or other damages under this section, unless
16 the action or omission also constitutes a direct viola-
17 tion of this section.

18 “(g) DISCLOSURES RELATING TO MANDATORY ES-
19 CROW OR IMPOUND ACCOUNT.—In the case of any im-
20 pound, trust, or escrow account that is subject to this sec-
21 tion, the creditor shall disclose by written notice to the
22 consumer at least 3 business days before the consumma-
23 tion of the consumer credit transaction giving rise to such
24 account or in accordance with timeframes established in
25 prescribed regulations the following information:

1 “(1) The fact that an escrow or impound ac-
2 count will be established at consummation of the
3 transaction.

4 “(2) The amount required at closing to initially
5 fund the escrow or impound account.

6 “(3) The amount, in the initial year after the
7 consummation of the transaction, of the estimated
8 taxes and hazard insurance, including flood insur-
9 ance, if applicable, and any other required periodic
10 payments or premiums that reflects, as appropriate,
11 either the taxable assessed value of the real property
12 securing the transaction, including the value of any
13 improvements on the property or to be constructed
14 on the property (whether or not such construction
15 will be financed from the proceeds of the trans-
16 action) or the replacement costs of the property.

17 “(4) The estimated monthly amount payable to
18 be escrowed for taxes, hazard insurance (including
19 flood insurance, if applicable) and any other re-
20 quired periodic payments or premiums.

21 “(5) The fact that, if the consumer chooses to
22 terminate the account at the appropriate time in the
23 future, the consumer will become responsible for the
24 payment of all taxes, hazard insurance, and flood in-
25 surance, if applicable, as well as any other required

1 periodic payments or premiums on the property un-
2 less a new escrow or impound account is established.

3 “(6) Such other information as the Federal
4 banking agencies jointly determine necessary for the
5 protection of the consumer.

6 “(h) DEFINITIONS.—For purposes of this section, the
7 following definitions shall apply:

8 “(1) FLOOD INSURANCE.—The term ‘flood in-
9 surance’ means flood insurance coverage provided
10 under the national flood insurance program pursu-
11 ant to the National Flood Insurance Act of 1968.

12 “(2) HAZARD INSURANCE.—The term ‘hazard
13 insurance’ shall have the same meaning as provided
14 for ‘hazard insurance’, ‘casualty insurance’, ‘home-
15 owner’s insurance’, or other similar term under the
16 law of the State where the real property securing the
17 consumer credit transaction is located.”.

18 (b) IMPLEMENTATION.—

19 (1) REGULATIONS.—The Board of Governors of
20 the Federal Reserve System, the Comptroller of the
21 Currency, the Director of the Office of Thrift Super-
22 vision, the Federal Deposit Insurance Corporation,
23 the National Credit Union Administration Board,
24 (hereafter in this title referred to as the “Federal
25 banking agencies”) and the Federal Trade Commis-

1 sion shall prescribe, in final form, such regulations
 2 as determined to be necessary to implement the
 3 amendments made by subsection (a) before the end
 4 of the 180-day period beginning on the date of the
 5 enactment of this Act.

6 (2) EFFECTIVE DATE.—The amendments made
 7 by subsection (a) shall only apply to covered mort-
 8 gage loans consummated after the end of the 1-year
 9 period beginning on the date of the publication of
 10 final regulations in the Federal Register.

11 (c) CLERICAL AMENDMENT.—The table of sections
 12 for chapter 2 of the Truth in Lending Act is amended
 13 by inserting after the item relating to section 129C (as
 14 added by section 9101) the following new item:

“129D. Escrow or impound accounts relating to certain consumer credit trans-
 actions.”.

15 **SEC. 9402. DISCLOSURE NOTICE REQUIRED FOR CON-**
 16 **SUMERS WHO WAIVE ESCROW SERVICES.**

17 (a) IN GENERAL.—Section 129D of the Truth in
 18 Lending Act (as added by section 9401) is amended by
 19 adding at the end the following new subsection:

20 “(i) DISCLOSURE NOTICE REQUIRED FOR CON-
 21 SUMERS WHO WAIVE ESCROW SERVICES.—

22 “(1) IN GENERAL.—If—

23 “(A) an impound, trust, or other type of
 24 account for the payment of property taxes, in-

1 surance premiums, or other purposes relating to
2 real property securing a consumer credit trans-
3 action is not established in connection with the
4 transaction; or

5 “(B) a consumer chooses, and provides
6 written notice to the creditor or servicer of such
7 choice, at any time after such an account is es-
8 tablished in connection with any such trans-
9 action and in accordance with any statute, reg-
10 ulation, or contractual agreement, to close such
11 account,

12 the creditor or servicer shall provide a timely and
13 clearly written disclosure to the consumer that ad-
14 vises the consumer of the responsibilities of the con-
15 sumer and implications for the consumer in the ab-
16 sence of any such account.

17 “(2) DISCLOSURE REQUIREMENTS.—Any dis-
18 closure provided to a consumer under paragraph (1)
19 shall include the following:

20 “(A) Information concerning any applica-
21 ble fees or costs associated with either the non-
22 establishment of any such account at the time
23 of the transaction, or any subsequent closure of
24 any such account.

1 “(B) A clear and prominent notice that the
2 consumer is responsible for personally and di-
3 rectly paying the non-escrowed items, in addi-
4 tion to paying the mortgage loan payment, in
5 the absence of any such account, and the fact
6 that the costs for taxes, insurance, and related
7 fees can be substantial.

8 “(C) A clear explanation of the con-
9 sequences of any failure to pay non-escrowed
10 items, including the possible requirement for
11 the forced placement of insurance by the cred-
12 itor or servicer and the potentially higher cost
13 (including any potential commission payments
14 to the servicer) or reduced coverage for the con-
15 sumer in the event of any such creditor-placed
16 insurance.

17 “(D) Such other information as the Fed-
18 eral banking agencies jointly determine nec-
19 essary for the protection of the consumer.”.

20 (b) IMPLEMENTATION.—

21 (1) REGULATIONS.—The Federal banking agen-
22 cies and the Federal Trade Commission shall pre-
23 scribe, in final form, such regulations as such agen-
24 cies determine to be necessary to implement the
25 amendments made by subsection (a) before the end

1 of the 180-day period beginning on the date of the
2 enactment of this Act.

3 (2) EFFECTIVE DATE.—The amendments made
4 by subsection (a) shall only apply in accordance with
5 the regulations established in paragraph (1) and be-
6 ginning on the date occurring 180-days after the
7 date of the publication of final regulations in the
8 Federal Register.

9 **SEC. 9403. REAL ESTATE SETTLEMENT PROCEDURES ACT**
10 **OF 1974 AMENDMENTS.**

11 (a) SERVICER PROHIBITIONS.—Section 6 of the Real
12 Estate Settlement Procedures Act of 1974 (12 U.S.C.
13 2605) is amended by adding at the end the following new
14 subsections:

15 “(k) SERVICER PROHIBITIONS.—

16 “(1) IN GENERAL.—A servicer of a federally re-
17 lated mortgage shall not—

18 “(A) obtain force-placed hazard insurance
19 unless there is a reasonable basis to believe the
20 borrower has failed to comply with the loan
21 contract’s requirements to maintain property
22 insurance;

23 “(B) charge fees for responding to valid
24 qualified written requests (as defined in regula-

1 tions which the Secretary shall prescribe) under
2 this section;

3 “(C) fail to take timely action to respond
4 to a borrower’s requests to correct errors relat-
5 ing to allocation of payments, final balances for
6 purposes of paying off the loan, or avoiding
7 foreclosure, or other standard servicer’s duties;

8 “(D) fail to respond within 10 business
9 days to a request from a borrower to provide
10 the identity, address, and other relevant contact
11 information about the owner assignee of the
12 loan; or

13 “(E) fail to comply with any other obliga-
14 tion found by the Secretary, by regulation, to
15 be appropriate to carry out the consumer pro-
16 tection purposes of this Act.

17 “(2) FORCE-PLACED INSURANCE DEFINED.—
18 For purposes of this subsection and subsections (l)
19 and (m), the term ‘force-placed insurance’ means
20 hazard insurance coverage obtained by a servicer of
21 a federally related mortgage when the borrower has
22 failed to maintain or renew hazard insurance on
23 such property as required of the borrower under the
24 terms of the mortgage.

1 “(1) REQUIREMENTS FOR FORCE-PLACED INSUR-
2 ANCE.—A servicer of a federally related mortgage shall
3 not be construed as having a reasonable basis for obtain-
4 ing force-placed insurance unless the requirements of this
5 subsection have been met.

6 “(1) WRITTEN NOTICES TO BORROWER.—A
7 servicer may not impose any charge on any borrower
8 for force-placed insurance with respect to any prop-
9 erty securing a federally related mortgage unless—

10 “(A) the servicer has sent, by first-class
11 mail, a written notice to the borrower con-
12 taining—

13 “(i) a reminder of the borrower’s obli-
14 gation to maintain hazard insurance on the
15 property securing the federally related
16 mortgage;

17 “(ii) a statement that the servicer
18 does not have evidence of insurance cov-
19 erage of such property;

20 “(iii) a clear and conspicuous state-
21 ment of the procedures by which the bor-
22 rower may demonstrate that the borrower
23 already has insurance coverage; and

24 “(iv) a statement that the servicer
25 may obtain such coverage at the borrower’s

1 expense if the borrower does not provide
2 such demonstration of the borrower's exist-
3 ing coverage in a timely manner;

4 “(B) the servicer has sent, by first-class
5 mail, a second written notice, at least 30 days
6 after the mailing of the notice under subpara-
7 graph (A) that contains all the information de-
8 scribed in each clause of such subparagraph;
9 and

10 “(C) the servicer has not received from the
11 borrower any demonstration of hazard insur-
12 ance coverage for the property securing the
13 mortgage by the end of the 15-day period be-
14 ginning on the date the notice under subpara-
15 graph (B) was sent by the servicer.

16 “(2) SUFFICIENCY OF DEMONSTRATION.—A
17 servicer of a federally related mortgage shall accept
18 any reasonable form of written confirmation from a
19 borrower of existing insurance coverage, which shall
20 include the existing insurance policy number along
21 with the identity of, and contact information for, the
22 insurance company or agent.

23 “(3) TERMINATION OF FORCE-PLACED INSUR-
24 ANCE.—Within 15 days of the receipt by a servicer

1 of confirmation of a borrower's existing insurance
2 coverage, the servicer shall—

3 “(A) terminate the force-placed insurance;
4 and

5 “(B) refund to the consumer all force-
6 placed insurance premiums paid by the bor-
7 rower during any period during which the bor-
8 rower's insurance coverage and the force-placed
9 insurance coverage were each in effect, and any
10 related fees charged to the consumer's account
11 with respect to the force-placed insurance dur-
12 ing such period.

13 “(4) CLARIFICATION WITH RESPECT TO FLOOD
14 DISASTER PROTECTION ACT.—No provision of this
15 section shall be construed as prohibiting a servicer
16 from providing simultaneous or concurrent notice of
17 a lack of flood insurance pursuant to section 102(e)
18 of the Flood Disaster Protection Act of 1973.

19 “(m) LIMITATIONS ON FORCE-PLACED INSURANCE
20 CHARGES.—All charges for force-placed insurance pre-
21 miums shall be bona fide and reasonable in amount.”.

22 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
23 of the Real Estate Settlement Procedures Act of 1974 (12
24 U.S.C. 2605(f)) is amended—

1 (1) in paragraphs (1)(B) and (2)(B), by strik-
2 ing “\$1,000” each place such term appears and in-
3 serting “\$2,000”; and

4 (2) in paragraph (2)(B)(i), by striking
5 “\$500,000” and inserting “\$1,000,000”.

6 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of
7 the Real Estate Settlement Procedures Act of 1974 (12
8 U.S.C. 2605(e)) is amended—

9 (1) in paragraph (1)(A), by striking “20 days”
10 and inserting “5 days”;

11 (2) in paragraph (2), by striking “60 days” and
12 inserting “30 days”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(4) LIMITED EXTENSION OF RESPONSE
16 TIME.—The 30-day period described in paragraph
17 (2) may be extended for not more than 15 days if,
18 before the end of such 30-day period, the servicer
19 notifies the borrower of the extension and the rea-
20 sons for the delay in responding.”.

21 (d) PROMPT REFUND OF ESCROW ACCOUNTS UPON
22 PAYOFF.—Section 6(g) of the Real Estate Settlement
23 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
24 by adding at the end the following new sentence: “Any
25 balance in any such account that is within the servicer’s

1 control at the time the loan is paid off shall be promptly
2 returned to the borrower within 20 business days or cred-
3 ited to a similar account for a new mortgage loan to the
4 borrower with the same lender.”.

5 **SEC. 9404. TRUTH IN LENDING ACT AMENDMENTS.**

6 (a) REQUIREMENTS FOR PROMPT CREDITING OF
7 HOME LOAN PAYMENTS.—Chapter 2 of the Truth in
8 Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
9 serting after section 129E (as added by section 9502) the
10 following new section (and by amending the table of con-
11 tents accordingly):

12 **“SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF**
13 **HOME LOAN PAYMENTS.**

14 “(a) IN GENERAL.—In connection with a consumer
15 credit transaction secured by a consumer’s principal dwell-
16 ing, no servicer shall fail to credit a payment to the con-
17 sumer’s loan account as of the date of receipt, except when
18 a delay in crediting does not result in any charge to the
19 consumer or in the reporting of negative information to
20 a consumer reporting agency, except as required in sub-
21 section (b).

22 “(b) EXCEPTION.—If a servicer specifies in writing
23 requirements for the consumer to follow in making pay-
24 ments, but accepts a payment that does not conform to

1 the requirements, the servicer shall credit the payment as
2 of 5 days after receipt.”.

3 (b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2
4 of such Act is further amended by inserting after section
5 129F (as added by subsection (a)) the following new sec-
6 tion (and by amending the table of contents accordingly):

7 **“SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME**
8 **LOAN.**

9 “A creditor or servicer of a home loan shall send an
10 accurate payoff balance within a reasonable time, but in
11 no case more than 7 business days, after the receipt of
12 a written request for such balance from or on behalf of
13 the borrower.”.

14 **SEC. 9405. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

15 Section 128(b) of the Truth in Lending Act (15
16 U.S.C. 1638(b)) is amended by adding at the end the fol-
17 lowing new paragraph:

18 “(4) REPAYMENT ANALYSIS REQUIRED TO IN-
19 CLUDE ESCROW PAYMENTS.—

20 “(A) IN GENERAL.—In the case of any
21 consumer credit transaction secured by a first
22 mortgage or lien on the principal dwelling of
23 the consumer, other than a consumer credit
24 transaction under an open end credit plan or a
25 reverse mortgage, for which an impound, trust,

1 or other type of account has been or will be es-
2 tablished in connection with the transaction for
3 the payment of property taxes, hazard and flood
4 (if any) insurance premiums, or other periodic
5 payments or premiums with respect to the
6 property, the information required to be pro-
7 vided under subsection (a) with respect to the
8 number, amount, and due dates or period of
9 payments scheduled to repay the total of pay-
10 ments shall take into account the amount of
11 any monthly payment to such account for each
12 such repayment in accordance with section
13 10(a)(2) of the Real Estate Settlement Proce-
14 dures Act of 1974.

15 “(B) ASSESSMENT VALUE.—The amount
16 taken into account under subparagraph (A) for
17 the payment of property taxes, hazard and flood
18 (if any) insurance premiums, or other periodic
19 payments or premiums with respect to the
20 property shall reflect the taxable assessed value
21 of the real property securing the transaction
22 after the consummation of the transaction, in-
23 cluding the value of any improvements on the
24 property or to be constructed on the property
25 (whether or not such construction will be fi-

1 nanced from the proceeds of the transaction), if
 2 known, and the replacement costs of the prop-
 3 erty for hazard insurance, in the initial year
 4 after the transaction.”.

5 **Subtitle F—Appraisal Activities**

6 **SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.**

7 Chapter 2 of the Truth in Lending Act (15 U.S.C.
 8 1631 et seq.) is amended by inserting after 129G (as
 9 added by section 9404(b)) the following new section:

10 **“SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

11 “(a) IN GENERAL.—A creditor may not extend credit
 12 in the form of a subprime mortgage to any consumer with-
 13 out first obtaining a written appraisal of the property to
 14 be mortgaged prepared in accordance with the require-
 15 ments of this section.

16 “(b) APPRAISAL REQUIREMENTS.—

17 “(1) PHYSICAL PROPERTY VISIT.—An appraisal
 18 of property to be secured by a subprime mortgage
 19 does not meet the requirement of this section unless
 20 it is performed by a qualified appraiser who con-
 21 ducts a physical property visit of the interior of the
 22 mortgaged property.

23 “(2) SECOND APPRAISAL UNDER CERTAIN CIR-
 24 CUMSTANCES.—

1 “(A) IN GENERAL.—If the purpose of a
2 subprime mortgage is to finance the purchase
3 or acquisition of the mortgaged property from
4 a person within 180 days of the purchase or ac-
5 quisition of such property by that person at a
6 price that was lower than the current sale price
7 of the property, the creditor shall obtain a sec-
8 ond appraisal from a different qualified ap-
9 praiser. The second appraisal shall include an
10 analysis of the difference in sale prices, changes
11 in market conditions, and any improvements
12 made to the property between the date of the
13 previous sale and the current sale.

14 “(B) NO COST TO APPLICANT.—The cost
15 of any second appraisal required under sub-
16 paragraph (A) may not be charged to the appli-
17 cant.

18 “(3) QUALIFIED APPRAISER DEFINED.—For
19 purposes of this section, the term ‘qualified ap-
20 praiser’ means a person who—

21 “(A) is, at a minimum, certified or licensed
22 by the State in which the property to be ap-
23 praised is located; and

24 “(B) performs each appraisal in con-
25 formity with the Uniform Standards of Profes-

1 sional Appraisal Practice and title XI of the Fi-
2 nancial Institutions Reform, Recovery, and En-
3 forcement Act of 1989, and the regulations pre-
4 scribed under such title, as in effect on the date
5 of the appraisal.

6 “(c) FREE COPY OF APPRAISAL.—A creditor shall
7 provide 1 copy of each appraisal conducted in accordance
8 with this section in connection with a subprime mortgage
9 to the applicant without charge, and at least 3 days prior
10 to the transaction closing date.

11 “(d) CONSUMER NOTIFICATION.—At the time of the
12 initial mortgage application, the applicant shall be pro-
13 vided with a statement by the creditor that any appraisal
14 prepared for the mortgage is for the sole use of the cred-
15 itor, and that the applicant may choose to have a separate
16 appraisal conducted at their own expense.

17 “(e) VIOLATIONS.—In addition to any other liability
18 to any person under this title, a creditor found to have
19 willfully failed to obtain an appraisal as required in this
20 section shall be liable to the applicant or borrower for the
21 sum of \$2,000.

22 “(f) SUBPRIME MORTGAGE DEFINED.—For purposes
23 of this section, the term ‘subprime mortgage’ means a res-
24 idential mortgage loan, other than a reverse mortgage loan
25 insured by the Federal Housing Administration, secured

1 by a principal dwelling with an annual percentage rate
2 that exceeds the average prime offer rate for a comparable
3 transaction, as of the date the interest rate is set—

4 “(1) by 1.5 or more percentage points, in the
5 case of a first lien residential mortgage loan having
6 an original principal obligation amount that does not
7 exceed the amount of the maximum limitation on the
8 original principal obligation of mortgage in effect for
9 a residence of the applicable size, as of the date of
10 such interest rate set, pursuant to the sixth sentence
11 of section 305(a)(2) the Federal Home Loan Mort-
12 gage Corporation Act (12 U.S.C. 1454(a)(2));

13 “(2) by 2.5 or more percentage points, in the
14 case of a first lien residential mortgage loan having
15 an original principal obligation amount that exceeds
16 the amount of the maximum limitation on the origi-
17 nal principal obligation of mortgage in effect for a
18 residence of the applicable size, as of the date of
19 such interest rate set, pursuant to the sixth sentence
20 of section 305(a)(2) the Federal Home Loan Mort-
21 gage Corporation Act (12 U.S.C. 1454(a)(2)); and

22 “(3) by 3.5 or more percentage points for a
23 subordinate lien residential mortgage loan.”.

1 **SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
2 **RELATING TO CERTAIN CONSUMER CREDIT**
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
6 after section 129D (as added by section 9401(a)) the fol-
7 lowing new section:

8 **“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
9 **RELATING TO CERTAIN CONSUMER CREDIT**
10 **TRANSACTIONS.**

11 “(a) IN GENERAL.—It shall be unlawful, in extending
12 credit or in providing any services for a consumer credit
13 transaction secured by the principal dwelling of the con-
14 sumer, to engage in any unfair or deceptive act or practice
15 as described in or pursuant to regulations prescribed
16 under this section.

17 “(b) APPRAISAL INDEPENDENCE.—For purposes of
18 subsection (a), unfair and deceptive practices shall in-
19 clude—

20 “(1) any appraisal of a property offered as se-
21 curity for repayment of the consumer credit trans-
22 action that is conducted in connection with such
23 transaction in which a person with an interest in the
24 underlying transaction compensates, coerces, extorts,
25 colludes, instructs, induces, bribes, or intimidates a
26 person conducting or involved in an appraisal, or at-

1 tempts, to compensate, coerce, extort, collude, in-
2 struct, induce, bribe, or intimidate such a person,
3 for the purpose of causing the appraised value as-
4 signed, under the appraisal, to the property to be
5 based on any factor other than the independent
6 judgment of the appraiser;

7 “(2) mischaracterizing, or suborning any
8 mischaracterization of, the appraised value of the
9 property securing the extension of the credit;

10 “(3) seeking to influence an appraiser or other-
11 wise to encourage a targeted value in order to facili-
12 tate the making or pricing of the transaction; and

13 “(4) withholding or threatening to withhold
14 timely payment for an appraisal report or for ap-
15 praisal services rendered.

16 “(c) EXCEPTIONS.—The requirements of subsection
17 (b) shall not be construed as prohibiting a mortgage lend-
18 er, mortgage broker, mortgage banker, real estate broker,
19 appraisal management company, employee of an appraisal
20 management company, consumer, or any other person
21 with an interest in a real estate transaction from asking
22 an appraiser to provide 1 or more of the following services:

23 “(1) Consider additional, appropriate property
24 information, including the consideration of addi-

1 tional comparable properties to make or support an
2 appraisal.

3 “(2) Provide further detail, substantiation, or
4 explanation for the appraiser’s value conclusion.

5 “(3) Correct errors in the appraisal report.

6 “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—

7 No certified or licensed appraiser conducting, and no ap-
8 praisal management company procuring or facilitating, an
9 appraisal in connection with a consumer credit transaction
10 secured by the principal dwelling of a consumer may have
11 a direct or indirect interest, financial or otherwise, in the
12 property or transaction involving the appraisal.

13 “(e) MANDATORY REPORTING.—Any mortgage lend-
14 er, mortgage broker, mortgage banker, real estate broker,
15 appraisal management company, employee of an appraisal
16 management company, or any other person involved in a
17 real estate transaction involving an appraisal in connection
18 with a consumer credit transaction secured by the prin-
19 cipal dwelling of a consumer who has a reasonable basis
20 to believe an appraiser is failing to comply with the Uni-
21 form Standards of Professional Appraisal Practice, is vio-
22 lating applicable laws, or is otherwise engaging in uneth-
23 ical or unprofessional conduct, shall refer the matter to
24 the applicable State appraiser certifying and licensing
25 agency.

1 “(f) NO EXTENSION OF CREDIT.—In connection with
2 a consumer credit transaction secured by a consumer’s
3 principal dwelling, a creditor who knows, at or before loan
4 consummation, of a violation of the appraisal independ-
5 ence standards established in subsections (b) or (d) shall
6 not extend credit based on such appraisal unless the cred-
7 itor documents that the creditor has acted with reasonable
8 diligence to determine that the appraisal does not materi-
9 ally misstate or misrepresent the value of such dwelling.

10 “(g) RULEMAKING PROCEEDINGS.—The Board, the
11 Comptroller of the Currency, the Director of the Office
12 of Thrift Supervision, the Federal Deposit Insurance Cor-
13 poration, the National Credit Union Administration
14 Board, and the Federal Trade Commission—

15 “(1) shall, for purposes of this section, jointly
16 prescribe regulations no later than 180 days after
17 the date of the enactment of this section, and where
18 such regulations have an effective date of no later
19 than 1 year after the date of the enactment of this
20 section, defining with specificity acts or practices
21 which are unfair or deceptive in the provision of
22 mortgage lending services for a consumer credit
23 transaction secured by the principal dwelling of the
24 consumer or mortgage brokerage services for such a

1 transaction and defining any terms in this section or
2 such regulations; and

3 “(2) may jointly issue interpretive guidelines
4 and general statements of policy with respect to un-
5 fair or deceptive acts or practices in the provision of
6 mortgage lending services for a consumer credit
7 transaction secured by the principal dwelling of the
8 consumer and mortgage brokerage services for such
9 a transaction, within the meaning of subsections (a),
10 (b), (c), (d), (e), and (f).

11 “(h) PENALTIES.—

12 “(1) FIRST VIOLATION.—In addition to the en-
13 forcement provisions referred to in section 130, each
14 person who violates this section shall forfeit and pay
15 a civil penalty of not more than \$10,000 for each
16 day any such violation continues.

17 “(2) SUBSEQUENT VIOLATIONS.—In the case of
18 any person on whom a civil penalty has been im-
19 posed under paragraph (1), paragraph (1) shall be
20 applied by substituting ‘\$20,000’ for ‘\$10,000’ with
21 respect to all subsequent violations.

22 “(3) ASSESSMENT.—The agency referred to in
23 subsection (a) or (c) of section 108 with respect to
24 any person described in paragraph (1) shall assess

1 any penalty under this subsection to which such per-
 2 son is subject.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
 4 for chapter 2 of the Truth in Lending Act is amended
 5 by inserting after the item relating to section 129D (as
 6 added by section 9401(c)) the following new item:

“129E. Unfair and deceptive practices and acts relating to certain consumer
 credit transactions.”.

7 **SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUB-**
 8 **COMMITTEE OF FIEC, APPRAISER INDEPEND-**
 9 **ENCE MONITORING, APPROVED APPRAISER**
 10 **EDUCATION, APPRAISAL MANAGEMENT COM-**
 11 **PANIES, APPRAISER COMPLAINT HOTLINE,**
 12 **AUTOMATED VALUATION MODELS, AND**
 13 **BROKER PRICE OPINIONS.**

14 (a) CONSUMER PROTECTION MISSION.—

15 (1) PURPOSES.—Section 1101 of the Financial
 16 Institutions Reform, Recovery, and Enforcement Act
 17 of 1989 (12 U.S.C. 3331) is amended by inserting
 18 “and to provide the Appraisal Subcommittee with a
 19 consumer protection mandate” before the period at
 20 the end.

21 (2) FUNCTIONS OF APPRAISAL SUB-
 22 COMMITTEE.—Section 1103(a) of the Financial In-
 23 stitutions Reform, Recovery, and Enforcement Act
 24 of 1989 (12 U.S.C. 3332(a)) is amended—

1 (A) by striking “and” at the end of para-
2 graph (3); and

3 (B) by amending paragraph (4) to read as
4 follows:

5 “(4) monitor the efforts of, and requirements
6 established by, States and the Federal financial in-
7 stitutions regulatory agencies to protect consumers
8 from improper appraisal practices and the preda-
9 tions of unlicensed appraisers in consumer credit
10 transactions that are secured by a consumer’s prin-
11 cipal dwelling; and”.

12 (3) THRESHOLD LEVELS.—Section 1112(b) of
13 the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is
15 amended by inserting before the period the fol-
16 lowing: “, and that such threshold level provides rea-
17 sonable protection for consumers who purchase 1–4
18 unit single-family residences. In determining whether
19 a threshold level provides reasonable protection for
20 consumers, each Federal financial institutions regu-
21 latory agency shall consult with consumer groups
22 and convene a public hearing”.

23 (b) ANNUAL REPORT OF APPRAISAL SUB-
24 COMMITTEE.—Section 1103(a) of the Financial Institu-
25 tions Reform, Recovery, and Enforcement Act of 1989 (12

1 U.S.C. 3332(a)) is amended at the end by inserting the
2 following new paragraph:

3 “(5) transmit an annual report to the Congress
4 not later than January 31 of each year that de-
5 scribes the manner in which each function assigned
6 to the Appraisal Subcommittee has been carried out
7 during the preceding year. The report shall also de-
8 tail the activities of the Appraisal Subcommittee, in-
9 cluding the results of all audits of State appraiser
10 regulatory agencies, and provide an accounting of
11 disapproved actions and warnings taken in the pre-
12 vious year, including a description of the conditions
13 causing the disapproval and actions taken to achieve
14 compliance.”.

15 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
16 cial Institutions Reform, Recovery, and Enforcement Act
17 of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in
18 public session after notice in the Federal Register” after
19 “shall meet”.

20 (d) REGULATIONS.—Section 1106 of the Financial
21 Institutions Reform, Recovery, and Enforcement Act of
22 1989 (12 U.S.C. 3335) is amended—

23 (1) by inserting “prescribe regulations after no-
24 tice and opportunity for comment,” after “hold
25 hearings”; and

1 (2) at the end by inserting “Any regulations
2 prescribed by the Appraisal Subcommittee shall (un-
3 less otherwise provided in this title) be limited to the
4 following functions: temporary practice, national reg-
5 istry, information sharing, and enforcement. For
6 purposes of prescribing regulations, the Appraisal
7 Subcommittee shall establish an advisory committee
8 of industry participants, including appraisers, lend-
9 ers, consumer advocates, and government agencies,
10 and hold meetings as necessary to support the devel-
11 opment of regulations.”.

12 (e) APPRAISALS AND APPRAISAL REVIEWS.—Section
13 1113 of the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

15 (1) by striking “In determining” and inserting
16 “(a) IN GENERAL.—In determining”;

17 (2) in subsection (a) (as designated by para-
18 graph (1)), by inserting before the period the fol-
19 lowing: “, where a complex 1-to-4 unit single family
20 residential appraisal means an appraisal for which
21 the property to be appraised, the form of ownership,
22 the property characteristics, or the market condi-
23 tions are atypical”; and

24 (3) by adding at the end the following new sub-
25 section:

1 “(b) APPRAISALS AND APPRAISAL REVIEWS.—All ap-
2 praisals performed at a property within a State shall be
3 prepared by appraisers licensed or certified in the State
4 where the property is located. All appraisal reviews, in-
5 cluding appraisal reviews by a lender, appraisal manage-
6 ment company, or other third party organization, shall be
7 performed by an appraiser who is duly licensed or certified
8 by a State appraisal board.”.

9 (f) APPRAISAL MANAGEMENT SERVICES.—

10 (1) SUPERVISION OF THIRD PARTY PROVIDERS
11 OF APPRAISAL MANAGEMENT SERVICES.—Section
12 1103(a) of the Financial Institutions Reform, Recov-
13 ery, and Enforcement Act of 1989 (12 U.S.C.
14 3332(a)) (as previously amended by this section) is
15 further amended—

16 (A) by amending paragraph (1) to read as
17 follows:

18 “(1) monitor the requirements established by
19 States—

20 “(A) for the certification and licensing of
21 individuals who are qualified to perform ap-
22 praisals in connection with federally related
23 transactions, including a code of professional
24 responsibility; and

1 “(B) for the registration and supervision
2 of the operations and activities of an appraisal
3 management company;”; and

4 (B) by adding at the end the following new
5 paragraph:

6 “(7) maintain a national registry of appraisal
7 management companies that either are registered
8 with and subject to supervision of a State appraiser
9 certifying and licensing agency or are operating sub-
10 sidiaries of a Federally regulated financial institu-
11 tion.”.

12 (2) APPRAISAL MANAGEMENT COMPANY MIN-
13 IMUM QUALIFICATIONS.—Title XI of the Financial
14 Institutions Reform, Recovery, and Enforcement Act
15 of 1989 (12 U.S.C. 3331 et seq.) is amended by
16 adding at the end the following new section (and
17 amending the table of contents accordingly):

18 **“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM**
19 **QUALIFICATIONS.**

20 “(a) IN GENERAL.—The Appraiser Qualifications
21 Board of the Appraisal Foundation shall establish min-
22 imum qualifications to be applied by a State in the reg-
23 istration of appraisal management companies. Such quali-
24 fications shall include a requirement that such compa-
25 nies—

1 “(1) register with and be subject to supervision
2 by a State appraiser certifying and licensing agency
3 in each State in which such company operates;

4 “(2) verify that only licensed or certified ap-
5 praisers are used for federally related transactions;

6 “(3) require that appraisals coordinated by an
7 appraisal management company comply with the
8 Uniform Standards of Professional Appraisal Prac-
9 tice; and

10 “(4) require that appraisals are conducted inde-
11 pendently and free from inappropriate influence and
12 coercion pursuant to the appraisal independence
13 standards established under section 129E of the
14 Truth in Lending Act.

15 “(b) EXCEPTION FOR FEDERALLY REGULATED FI-
16 NANCIAL INSTITUTIONS.—The requirements of subsection
17 (a) shall not apply to an appraisal management company
18 that is a subsidiary owned and controlled by a financial
19 institution and regulated by a federal financial institution
20 regulatory agency. In such case, the appropriate federal
21 financial institutions regulatory agency shall, at a min-
22 imum, develop regulations affecting the operations of the
23 appraisal management company to—

24 “(1) verify that only licensed or certified ap-
25 praisers are used for federally related transactions;

1 “(2) require that appraisals coordinated by an
2 institution or subsidiary providing appraisal manage-
3 ment services comply with the Uniform Standards of
4 Professional Appraisal Practice; and

5 “(3) require that appraisals are conducted inde-
6 pendently and free from inappropriate influence and
7 coercion pursuant to the appraisal independence
8 standards established under section 129E of the
9 Truth in Lending Act.

10 “(c) REGISTRATION LIMITATIONS.—An appraisal
11 management company shall not be registered by a State
12 if such company, in whole or in part, directly or indirectly,
13 is owned by any person who has had an appraiser license
14 or certificate refused, denied, cancelled, surrendered in
15 lieu of revocation, or revoked in any State. Additionally,
16 each person that owns more than 10 percent of an ap-
17 praisal management company shall be of good moral char-
18 acter, as determined by the State appraiser certifying and
19 licensing agency, and shall submit to a background inves-
20 tigation carried out by the State appraiser certifying and
21 licensing agency.

22 “(d) REGULATIONS.—The Appraisal Subcommittee
23 shall promulgate regulations to implement the minimum
24 qualifications developed by the Appraiser Qualifications
25 Board under this section, as such qualifications relate to

1 the State appraiser certifying and licensing agencies. The
2 Appraisal Subcommittee shall also promulgate regulations
3 for the reporting of the activities of appraisal management
4 companies in determining the payment of the annual reg-
5 istry fee.

6 “(e) EFFECTIVE DATE.—

7 “(1) IN GENERAL.—No appraisal management
8 company may perform services related to a federally
9 related transaction in a State after the date that is
10 36 months after the date of the enactment of this
11 section unless such company is registered with such
12 State or subject to oversight by a federal financial
13 institutions regulatory agency.

14 “(2) EXTENSION OF EFFECTIVE DATE.—Sub-
15 ject to the approval of the Council, the Appraisal
16 Subcommittee may extend by an additional 12
17 months the requirements for the registration and su-
18 pervision of appraisal management companies if it
19 makes a written finding that a State has made sub-
20 stantial progress in establishing a State appraisal
21 management company registration and supervision
22 system that appears to conform with the provisions
23 of this title.”.

24 (3) STATE APPRAISER CERTIFYING AND LI-
25 CENSING AGENCY AUTHORITY.—Section 1117 of the

1 Financial Institutions Reform, Recovery, and En-
2 forcement Act of 1989 (12 U.S.C. 3346) is amended
3 by adding at the end the following: “The duties of
4 such agency may additionally include the registra-
5 tion and supervision of appraisal management com-
6 panies.”.

7 (4) APPRAISAL MANAGEMENT COMPANY DEFINI-
8 TION.—Section 1121 of the Financial Institutions
9 Reform, Recovery, and Enforcement Act of 1989
10 (12 U.S.C. 3350) is amended by adding at the end
11 the following:

12 “(11) APPRAISAL MANAGEMENT COMPANY.—
13 The term ‘appraisal management company’ means,
14 in connection with valuing properties collateralizing
15 mortgage loans or mortgages incorporated into a
16 securitization, any external third party authorized ei-
17 ther by a creditor of a consumer credit transaction
18 secured by a consumer’s principal dwelling or by an
19 underwriter of or other principal in the secondary
20 mortgage markets, that oversees a network or panel
21 of more than 15 certified or licensed appraisers in
22 a State or 25 or more nationally within a given
23 year—

24 “(A) to recruit, select, and retain apprais-

25 ers;

1 “(B) to contract with licensed and certified
2 appraisers to perform appraisal assignments;

3 “(C) to manage the process of having an
4 appraisal performed, including providing admin-
5 istrative duties such as receiving appraisal or-
6 ders and appraisal reports, submitting com-
7 pleted appraisal reports to creditors and under-
8 writers, collecting fees from creditors and un-
9 derwriters for services provided, and reimburs-
10 ing appraisers for services performed; or

11 “(D) to review and verify the work of ap-
12 praisers.”.

13 (g) STATE AGENCY REPORTING REQUIREMENT.—
14 Section 1109(a) of the Financial Institutions Reform, Re-
15 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
16 is amended—

17 (1) by striking “and” after the semicolon in
18 paragraph (1);

19 (2) by redesignating paragraph (2) as para-
20 graph (4); and

21 (3) by inserting after paragraph (1) the fol-
22 lowing new paragraphs:

23 “(2) transmit reports on sanctions, disciplinary
24 actions, license and certification revocations, and li-
25 cense and certification suspensions on a timely basis

1 to the national registry of the Appraisal Sub-
2 committee;

3 “(3) transmit reports on a timely basis of su-
4 pervisory activities involving appraisal management
5 companies or other third-party providers of apprais-
6 als and appraisal management services, including in-
7 vestigations initiated and disciplinary actions taken;
8 and”.

9 (h) REGISTRY FEES MODIFIED.—

10 (1) IN GENERAL.—Section 1109(a) of the Fi-
11 nancial Institutions Reform, Recovery, and Enforce-
12 ment Act of 1989 (12 U.S.C. 3338(a)) is amend-
13 ed—

14 (A) by amending paragraph (4) (as modi-
15 fied by section 9503(g)) to read as follows:

16 “(4) collect—

17 “(A) from such individuals who perform or
18 seek to perform appraisals in federally related
19 transactions, an annual registry fee of not more
20 than \$40, such fees to be transmitted by the
21 State agencies to the Council on an annual
22 basis; and

23 “(B) from an appraisal management com-
24 pany that either has registered with a State ap-
25 praiser certifying and licensing agency in ac-

1 cordance with this title or operates as a sub-
2 sidiary of a federally regulated financial institu-
3 tion, an annual registry fee of—

4 “(i) in the case of such a company
5 that has been in existence for more than a
6 year, \$25 multiplied by the number of ap-
7 praisers working for or contracting with
8 such company in such State during the
9 previous year, but where such \$25 amount
10 may be adjusted, up to a maximum of \$50,
11 at the discretion of the Appraisal Sub-
12 committee, if necessary to carry out the
13 Subcommittee’s functions under this title;
14 and

15 “(ii) in the case of such a company
16 that has not been in existence for more
17 than a year, \$25 multiplied by an appro-
18 priate number to be determined by the Ap-
19 praisal Subcommittee, and where such
20 number will be used for determining the
21 fee of all such companies that were not in
22 existence for more than a year, but where
23 such \$25 amount may be adjusted, up to
24 a maximum of \$50, at the discretion of the
25 Appraisal Subcommittee, if necessary to

1 carry out the Subcommittee's functions
2 under this title.”; and

3 (B) by amending the matter following
4 paragraph (4), as redesignated, to read as fol-
5 lows:

6 “Subject to the approval of the Council, the Appraisal
7 Subcommittee may adjust the dollar amount of registry
8 fees under paragraph (4)(A), up to a maximum of \$80
9 per annum, as necessary to carry out its functions under
10 this title. The Appraisal Subcommittee shall consider at
11 least once every 5 years whether to adjust the dollar
12 amount of the registry fees to account for inflation. In
13 implementing any change in registry fees, the Appraisal
14 Subcommittee shall provide flexibility to the States for
15 multi-year certifications and licenses already in place, as
16 well as a transition period to implement the changes in
17 registry fees. In establishing the amount of the annual
18 registry fee for an appraisal management company, the
19 Appraisal Subcommittee shall have the discretion to im-
20 pose a minimum annual registry fee for an appraisal man-
21 agement company to protect against the under reporting
22 of the number of appraisers working for or contracted by
23 the appraisal management company.”.

24 (2) INCREMENTAL REVENUES.—Incremental
25 revenues collected pursuant to the increases required

1 by this subsection shall be placed in a separate ac-
2 count at the United States Treasury, entitled the
3 “Appraisal Subcommittee Account”.

4 (i) GRANTS AND REPORTS.—Section 1109(b) of the
5 Financial Institutions Reform, Recovery, and Enforce-
6 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

7 (1) by striking “and” after the semicolon in
8 paragraph (3);

9 (2) by striking the period at the end of para-
10 graph (4) and inserting a semicolon;

11 (3) by adding at the end the following new
12 paragraphs:

13 “(5) to make grants to State appraiser certi-
14 fying and licensing agencies to support the efforts of
15 such agencies to comply with this title, including—

16 “(A) the complaint process, complaint in-
17 vestigations, and appraiser enforcement activi-
18 ties of such agencies; and

19 “(B) the submission of data on State li-
20 censed and certified appraisers and appraisal
21 management companies to the National ap-
22 praisal registry, including information affirming
23 that the appraiser or appraisal management
24 company meets the required qualification cri-

1 teria and formal and informal disciplinary ac-
2 tions; and

3 “(6) to report to all State appraiser certifying
4 and licensing agencies when a license or certification
5 is surrendered, revoked, or suspended.”.

6 Obligations authorized under this subsection may not ex-
7 ceed 75 percent of the fiscal year total of incremental in-
8 crease in fees collected and deposited in the “Appraisal
9 Subcommittee Account” pursuant to subsection (h).

10 (j) CRITERIA.—Section 1116 of the Financial Institu-
11 tions Reform, Recovery, and Enforcement Act of 1989 (12
12 U.S.C. 3345) is amended—

13 (1) in subsection (c), by inserting “whose cri-
14 teria for the licensing of a real estate appraiser cur-
15 rently meet or exceed the minimum criteria issued
16 by the Appraisal Qualifications Board of The Ap-
17 praisal Foundation for the licensing of real estate
18 appraisers” before the period at the end; and

19 (2) by striking subsection (e) and inserting the
20 following new subsection:

21 “(e) MINIMUM QUALIFICATION REQUIREMENTS.—
22 Any requirements established for individuals in the posi-
23 tion of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’
24 shall meet or exceed the minimum qualification require-
25 ments of the Appraiser Qualifications Board of The Ap-

1 praisal Foundation. The Appraisal Subcommittee shall
2 have the authority to enforce these requirements.”.

3 (k) MONITORING OF STATE APPRAISER CERTIFYING
4 AND LICENSING AGENCIES.—Section 1118 of the Finan-
5 cial Institutions Reform, Recovery, and Enforcement Act
6 of 1989 (12 U.S.C. 3347) is amended—

7 (1) by amending subsection (a) to read as fol-
8 lows:

9 “(a) IN GENERAL.—The Appraisal Subcommittee
10 shall monitor each State appraiser certifying and licensing
11 agency for the purposes of determining whether such
12 agency—

13 “(1) has policies, practices, funding, staffing,
14 and procedures that are consistent with this title;

15 “(2) processes complaints and completes inves-
16 tigation in a reasonable time period;

17 “(3) appropriately disciplines sanctioned ap-
18 praisers and appraisal management companies;

19 “(4) maintains an effective regulatory program;
20 and

21 “(5) reports complaints and disciplinary actions
22 on a timely basis to the national registries on ap-
23 praisers and appraisal management companies main-
24 tained by the Appraisal Subcommittee.

1 The Appraisal Subcommittee shall have the authority to
2 remove a State licensed or certified appraiser or a reg-
3 istered appraisal management company from a national
4 registry on an interim basis pending State agency action
5 on licensing, certification, registration, and disciplinary
6 proceedings. The Appraisal Subcommittee and all agen-
7 cies, instrumentalities, and Federally recognized entities
8 under this title shall not recognize appraiser certifications
9 and licenses from States whose appraisal policies, prac-
10 tices, funding, staffing, or procedures are found to be in-
11 consistent with this title. The Appraisal Subcommittee
12 shall have the authority to impose sanctions, as described
13 in this section, against a State agency that fails to have
14 an effective appraiser regulatory program. In determining
15 whether such a program is effective, the Appraisal Sub-
16 committee shall include an analyses of the licensing and
17 certification of appraisers, the registration of appraisal
18 management companies, the issuance of temporary li-
19 censes and certifications for appraisers, the receiving and
20 tracking of submitted complaints against appraisers and
21 appraisal management companies, the investigation of
22 complaints, and enforcement actions against appraisers
23 and appraisal management companies. The Appraisal
24 Subcommittee shall have the authority to impose interim
25 actions and suspensions against a State agency as an al-

1 ternative to, or in advance of, the derecognition of a State
2 agency.”.

3 (2) in subsection (b)(2), by inserting after “au-
4 thority” the following: “or sufficient funding”.

5 (l) RECIPROCITY.—Subsection (b) of section 1122 of
6 the Financial Institutions Reform, Recovery, and Enforce-
7 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
8 as follows:

9 “(b) RECIPROCITY.—A State appraiser certifying or
10 licensing agency shall issue a reciprocal certification or li-
11 cense for an individual from another State when—

12 “(1) the appraiser licensing and certification
13 program of such other State is in compliance with
14 the provisions of this title; and

15 “(2) the appraiser holds a valid certification
16 from a State whose requirements for certification or
17 licensing meet or exceed the licensure standards es-
18 tablished by the State where an individual seeks ap-
19 praisal licensure.”.

20 (m) CONSIDERATION OF PROFESSIONAL APPRAISAL
21 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
22 tutions Reform, Recovery, and Enforcement Act of 1989
23 (12 U.S.C. 3351(d)) is amended by striking “shall not ex-
24 clude” and all that follows through the end of the sub-
25 section and inserting the following: “may include edu-

1 cation achieved, experience, sample appraisals, and ref-
2 erences from prior clients. Membership in a nationally rec-
3 ognized professional appraisal organization may be a cri-
4 teria considered, though lack of membership therein shall
5 not be the sole bar against consideration for an assign-
6 ment under these criteria.”.

7 (n) APPRAISER INDEPENDENCE.—Section 1122 of
8 the Financial Institutions Reform, Recovery, and Enforce-
9 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
10 at the end the following new subsection:

11 “(g) APPRAISER INDEPENDENCE MONITORING.—
12 The Appraisal Subcommittee shall monitor each State ap-
13 praiser certifying and licensing agency for the purpose of
14 determining whether such agency’s policies, practices, and
15 procedures are consistent with the purposes of maintain-
16 ing appraiser independence and whether such State has
17 adopted and maintains effective laws, regulations, and
18 policies aimed at maintaining appraiser independence.”.

19 (o) APPRAISER EDUCATION.—Section 1122 of the
20 Financial Institutions Reform, Recovery, and Enforce-
21 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
22 ing after subsection (g) (as added by subsection (l) of this
23 section) the following new subsection:

24 “(h) APPROVED EDUCATION.—The Appraisal Sub-
25 committee shall encourage the States to accept courses ap-

1 proved by the Appraiser Qualification Board’s Course Ap-
2 proval Program.”.

3 (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122
4 of the Financial Institutions Reform, Recovery, and En-
5 forcement Act of 1989 (12 U.S.C. 3351), as amended by
6 this section, is further amended by adding at the end the
7 following new subsection:

8 “(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—
9 If, 1 year after the date of the enactment of this sub-
10 section, the Appraisal Subcommittee determines that no
11 national hotline exists to receive complaints of non-compli-
12 ance with appraisal independence standards and Uniform
13 Standards of Professional Appraisal Practice, including
14 complaints from appraisers, individuals, or other entities
15 concerning the improper influencing or attempted im-
16 proper influencing of appraisers or the appraisal process,
17 the Appraisal Subcommittee shall establish and operate
18 such a national hotline, which shall include a toll-free tele-
19 phone number and an email address. If the Appraisal Sub-
20 committee operates such a national hotline, the Appraisal
21 Subcommittee shall refer complaints for further action to
22 appropriate governmental bodies, including a State ap-
23 praiser certifying and licensing agency, a financial institu-
24 tion regulator, or other appropriate legal authorities. For
25 complaints referred to State appraiser certifying and li-

1 censing agencies or to Federal regulators, the Appraisal
 2 Subcommittee shall have the authority to follow up such
 3 complaint referrals in order to determine the status of the
 4 resolution of the complaint.”.

5 (q) AUTOMATED VALUATION MODELS.—Title XI of
 6 the Financial Institutions Reform, Recovery, and Enforce-
 7 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended
 8 by this section, is further amended by adding at the end
 9 the following new section (and amending the table of con-
 10 tents accordingly):

11 **“SEC. 1125. AUTOMATED VALUATION MODELS USED TO**
 12 **VALUE CERTAIN MORTGAGES.**

13 “(a) IN GENERAL.—Automated valuation models
 14 shall adhere to quality control standards designed to—

15 “(1) ensure a high level of confidence in the es-
 16 timates produced by automated valuation models;

17 “(2) protect against the manipulation of data;

18 “(3) seek to avoid conflicts of interest; and

19 “(4) require random sample testing and re-
 20 views, where such testing and reviews are performed
 21 by an appraiser who is licensed or certified in the
 22 State where the testing and reviews take place.

23 “(b) ADOPTION OF REGULATIONS.—The Appraisal
 24 Subcommittee and its member agencies, in consultation
 25 with the Appraisal Standards Board of the Appraisal

1 Foundation and other interested parties, shall promulgate
2 regulations to implement the quality control standards re-
3 quired under this section.

4 “(c) ENFORCEMENT.—Compliance with regulations
5 issued under this subsection shall be enforced by—

6 “(1) with respect to a financial institution, or
7 subsidiary owned and controlled by a financial insti-
8 tution and regulated by a Federal financial institu-
9 tion regulatory agency, the Federal financial institu-
10 tion regulatory agency that acts as the primary Fed-
11 eral supervisor of such financial institution or sub-
12 sidiary; and

13 “(2) with respect to other persons, the Ap-
14 praisal Subcommittee.

15 “(d) AUTOMATED VALUATION MODEL DEFINED.—
16 For purposes of this section, the term ‘automated valu-
17 ation model’ means any computerized model used by mort-
18 gage originators and secondary market issuers to deter-
19 mine the collateral worth of a mortgage secured by a con-
20 sumer’s principal dwelling.”.

21 (r) BROKER PRICE OPINIONS.—Title XI of the Fi-
22 nancial Institutions Reform, Recovery, and Enforcement
23 Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
24 section, is further amended by adding at the end the fol-

1 lowing new section (and amending the table of contents
2 accordingly):

3 **“SEC. 1126. BROKER PRICE OPINIONS.**

4 “(a) GENERAL PROHIBITION.—In conjunction with
5 the purchase of a consumer’s principal dwelling, broker
6 price opinions may not be used as the primary basis to
7 determine the value of a piece of property for the purpose
8 of a loan origination of a residential mortgage loan se-
9 cured by such piece of property.

10 “(b) BROKER PRICE OPINION DEFINED.—For pur-
11 poses of this section, the term ‘broker price opinion’ means
12 an estimate prepared by a real estate broker, agent, or
13 sales person that details the probable selling price of a
14 particular piece of real estate property and provides a
15 varying level of detail about the property’s condition, mar-
16 ket, and neighborhood, and information on comparable
17 sales, but does not include an automated valuation model,
18 as defined in section 1125(c).”.

19 (s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—
20 Section 1011 of the Federal Financial Institutions Exam-
21 ination Council Act of 1978 (12 U.S.C. 3310) is amend-
22 ed—

23 (1) in the first sentence, by adding before the
24 period the following: “and the Federal Housing Fi-
25 nance Agency”; and

1 (2) by inserting at the end the following: “At
2 all times at least one member of the Appraisal Sub-
3 committee shall have demonstrated knowledge and
4 competence through licensure, certification, or pro-
5 fessional designation within the appraisal profes-
6 sion.”.

7 (t) TECHNICAL CORRECTIONS.—

8 (1) Section 1119(a)(2) of the Financial Institu-
9 tions Reform, Recovery, and Enforcement Act of
10 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
11 “council,” and inserting “Council,”.

12 (2) Section 1121(6) of the Financial Institu-
13 tions Reform, Recovery, and Enforcement Act of
14 1989 (12 U.S.C. 3350(6)) is amended by striking
15 “Corporations,” and inserting “Corporation,”.

16 (3) Section 1121(8) of the Financial Institu-
17 tions Reform, Recovery, and Enforcement Act of
18 1989 (12 U.S.C. 3350(8)) is amended by striking
19 “council” and inserting “Council”.

20 (4) Section 1122 of the Financial Institutions
21 Reform, Recovery, and Enforcement Act of 1989
22 (12 U.S.C. 3351) is amended—

23 (A) in subsection (a)(1) by moving the left
24 margin of subparagraphs (A), (B), and (C) 2
25 ems to the right; and

1 (B) in subsection (c)—

2 (i) by striking “Federal Financial In-
3 stitutions Examination Council” and in-
4 serting “Financial Institutions Examina-
5 tion Council”; and

6 (ii) by striking “the council’s func-
7 tions” and inserting “the Council’s func-
8 tions”.

9 **SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
10 **PRAISAL PROCESS AND COMPLIANCE PRO-**
11 **GRAMS.**

12 (a) STUDY.—The Comptroller General shall conduct
13 a comprehensive study on possible improvements in the
14 appraisal process generally, and specifically on the consist-
15 ency in and the effectiveness of, and possible improve-
16 ments in, State compliance efforts and programs in ac-
17 cordance with title XI of the Financial Institutions Re-
18 form, Recovery, and Enforcement Act of 1989. In addi-
19 tion, this study shall examine the existing exemptions to
20 the use of certified appraisers issued by Federal financial
21 institutions regulatory agencies. The study shall also re-
22 view the threshold level established by Federal regulators
23 for compliance under title XI and whether there is a need
24 to revise them to reflect the addition of consumer protec-
25 tion to the purposes and functions of the Appraisal Sub-

1 committee. The study shall additionally examine the qual-
2 ity of different types of mortgage collateral valuations pro-
3 duced by broker price opinions, automated valuation mod-
4 els, licensed appraisals, and certified appraisals, among
5 others, and the quality of appraisals provided through dif-
6 ferent distribution channels, including appraisal manage-
7 ment companies, independent appraisal operations within
8 a mortgage originator, and fee-for-service appraisals. The
9 study shall also include an analysis and statistical break-
10 down of enforcement actions taken during the last 10
11 years against different types of appraisers, including cer-
12 tified, licensed, supervisory, and trainee appraisers. Fur-
13 thermore, the study shall examine the benefits and costs,
14 as well as the advantages and disadvantages, of estab-
15 lishing a national repository to collect data related to real
16 estate property collateral valuations performed in the
17 United States.

18 (b) REPORT.—Before the end of the 18-month period
19 beginning on the date of the enactment of this Act, the
20 Comptroller General shall submit a report on the study
21 under subsection (a) to the Committee on Financial Serv-
22 ices of the House of Representatives and the Committee
23 on Banking, Housing, and Urban Affairs of the Senate,
24 together with such recommendations for administrative or

1 legislative action, at the Federal or State level, as the
2 Comptroller General may determine to be appropriate.

3 (c) ADDITIONAL STUDY REQUIRED.—The Comp-
4 troller General shall conduct an additional study to deter-
5 mine the effects that the changes to the seller-guide ap-
6 praisal requirements of Fannie Mae and Freddie Mac con-
7 tained in the Home Valuation Code of Conduct have on
8 small business, like mortgage brokers and independent ap-
9 praisers, and consumers, including the effect on the—

10 (1) quality and costs of appraisals;

11 (2) length of time for obtaining appraisals;

12 (3) impact on consumer protection, especially
13 regarding maintaining appraisal independence, abat-
14 ing appraisal inflation, and mitigating acts of ap-
15 appraisal fraud;

16 (4) structure of the appraisal industry, espe-
17 cially regarding appraisal management companies,
18 fee-for-service appraisers, and the regulation of ap-
19 appraisal management companies by the states; and

20 (5) impact on mortgage brokers and other small
21 business professionals in the financial services indus-
22 try.

23 (d) ADDITIONAL REPORT.—Before the end of the 6-
24 month period beginning on the date of the enactment of
25 this Act, the Comptroller General shall submit an addi-

1 tional report to the Committee on Financial Services of
2 the House of Representatives and the Committee on
3 Banking, Housing, and Urban Affairs of the Senate con-
4 taining the findings and conclusions of the Comptroller
5 General with respect to the study conducted pursuant to
6 subsection (c). Such additional report shall take into con-
7 sideration the Small Business Administration's views on
8 how small businesses are affected by the Home Valuation
9 Code of Conduct.

10 **SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

11 Subsection (e) of section 701 of the Equal Credit Op-
12 portunity Act (15 U.S.C. 1691) is amended to read as
13 follows:

14 “(e) COPIES FURNISHED TO APPLICANTS.—

15 “(1) IN GENERAL.—Each creditor shall furnish
16 to an applicant a copy of any and all written ap-
17 praisals and valuations developed in connection with
18 the applicant's application for a loan that is secured
19 or would have been secured by a first lien on a
20 dwelling promptly upon completion, but in no case
21 later than 3 days prior to the closing of the loan,
22 whether the creditor grants or denies the applicant's
23 request for credit or the application is incomplete or
24 withdrawn.

1 “(2) WAIVER.—The applicant may waive the 3
2 day requirement provided for in paragraph (1), ex-
3 cept where otherwise required in law.

4 “(3) REIMBURSEMENT.—The applicant may be
5 required to pay a reasonable fee to reimburse the
6 creditor for the cost of the appraisal, except where
7 otherwise required in law.

8 “(4) FREE COPY.—Notwithstanding paragraph
9 (3), the creditor shall provide a copy of each written
10 appraisal or valuation at no additional cost to the
11 applicant.

12 “(5) NOTIFICATION TO APPLICANTS.—At the
13 time of application, the creditor shall notify an ap-
14 plicant in writing of the right to receive a copy of
15 each written appraisal and valuation under this sub-
16 section.

17 “(6) REGULATIONS.—The Board shall prescribe
18 regulations to implement this subsection within 1
19 year of the date of the enactment of this subsection.

20 “(7) VALUATION DEFINED.—For purposes of
21 this subsection, the term ‘valuation’ shall include
22 any estimate of the value of a dwelling developed in
23 connection with a creditor’s decision to provide cred-
24 it, including those values developed pursuant to a
25 policy of a government sponsored enterprise or by an

1 automated valuation model, a broker price opinion,
2 or other methodology or mechanism.”.

3 **SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT**
4 **OF 1974 AMENDMENT RELATING TO CERTAIN**
5 **APPRAISAL FEES.**

6 Section 4 of the Real Estate Settlement Procedures
7 Act of 1974 is amended by adding at the end the following
8 new subsection:

9 “(c) The standard form described in subsection (a)
10 shall include, in the case of an appraisal coordinated by
11 an appraisal management company (as such term is de-
12 fined in section 1121(11) of the Financial Institutions Re-
13 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
14 3350(11))), a clear disclosure of—

15 “(1) the fee paid directly to the appraiser by
16 such company; and

17 “(2) the administration fee charged by such
18 company.”.

1 **Subtitle G—Sense of Congress Re-**
2 **garding the Importance of Gov-**
3 **ernment Sponsored Enterprises**
4 **Reform**

5 **SEC. 9601. SENSE OF CONGRESS REGARDING THE IMPOR-**
6 **TANCE OF GOVERNMENT-SPONSORED EN-**
7 **TERPRISES REFORM TO ENHANCE THE PRO-**
8 **TECTION, LIMITATION, AND REGULATION OF**
9 **THE TERMS OF RESIDENTIAL MORTGAGE**
10 **CREDIT.**

11 (a) FINDINGS.—The Congress finds as follows:

12 (1) The Government-sponsored enterprises,
13 Federal National Mortgage Association (Fannie
14 Mae) and the Federal Home Loan Mortgage Cor-
15 poration (Freddie Mac), were chartered by Congress
16 to ensure a reliable and affordable supply of mort-
17 gage funding, but enjoy a dual legal status as pri-
18 vately owned corporations with Government man-
19 dated affordable housing goals.

20 (2) In 1996, the Department of Housing and
21 Urban Development required that 42 percent of
22 Fannie Mae's and Freddie Mac's mortgage financing
23 should go to borrowers with income levels below the
24 median for a given area.

1 (3) In 2004, the Department of Housing and
2 Urban Development revised those goals, increasing
3 them to 56 percent of their overall mortgage pur-
4 chases by 2008, and additionally mandated that 12
5 percent of all mortgage purchases by Fannie Mae
6 and Freddie Mac be “special affordable” loans made
7 to borrowers with incomes less than 60 percent of an
8 area’s median income, a target that ultimately in-
9 creased to 28 percent for 2008.

10 (4) To help fulfill those mandated affordable
11 housing goals, in 1995 the Department of Housing
12 and Urban Development authorized Fannie Mae and
13 Freddie Mac to purchase subprime securities that
14 included loans made to low-income borrowers.

15 (5) After this authorization to purchase
16 subprime securities, subprime and near-prime loans
17 increased from 9 percent of securitized mortgages in
18 2001 to 40 percent in 2006, while the market share
19 of conventional mortgages dropped from 78.8 per-
20 cent in 2003 to 50.1 percent by 2007 with a cor-
21 responding increase in subprime and Alt-A loans
22 from 10.1 percent to 32.7 percent over the same pe-
23 riod.

24 (6) In 2004 alone, Fannie Mae and Freddie
25 Mac purchased \$175,000,000,000 in subprime mort-

1 gage securities, which accounted for 44 percent of
2 the market that year, and from 2005 through 2007,
3 Fannie Mae and Freddie Mac purchased approxi-
4 mately \$1,000,000,000,000 in subprime and Alt-A
5 loans, while Fannie Mae's acquisitions of mortgages
6 with less than 10 percent down payments almost tri-
7 pled.

8 (7) According to data from the Federal Hous-
9 ing Finance Agency (FHFA) for the fourth quarter
10 of 2008, Fannie Mae and Freddie Mac own or guar-
11 antee 75 percent of all newly originated mortgages,
12 and Fannie Mae and Freddie Mac currently own
13 13.3 percent of outstanding mortgage debt in the
14 United States and have issued mortgage-backed se-
15 curities for 31.0 percent of the residential debt mar-
16 ket, a combined total of 44.3 percent of outstanding
17 mortgage debt in the United States.

18 (8) On September 7, 2008, the FHFA placed
19 Fannie Mae and Freddie Mac into conservatorship,
20 with the Treasury Department subsequently agree-
21 ing to purchase at least \$200,000,000,000 of pre-
22 ferred stock from each enterprise in exchange for
23 warrants for the purchase of 79.9 percent of each
24 enterprise's common stock.

1 (9) The conservatorship for Fannie Mae and
2 Freddie Mac has potentially exposed taxpayers to
3 upwards of \$5,300,000,000,000 worth of risk.

4 (10) The hybrid public-private status of Fannie
5 Mae and Freddie Mac is untenable and must be re-
6 solved to assure that consumers are offered and re-
7 ceive residential mortgage loans on terms that rea-
8 sonably reflect their ability to repay the loans and
9 that are understandable and not unfair, deceptive, or
10 abusive.

11 (b) SENSE OF THE CONGRESS.—It is the sense of
12 the Congress that efforts to enhance by the protection,
13 limitation, and regulation of the terms of residential mort-
14 gage credit and the practices related to such credit would
15 be incomplete without enactment of meaningful structural
16 reforms of Fannie Mae and Freddie Mac.

17 **Subtitle H—Reports and Data**
18 **Collection**

19 **SEC. 9701. GAO STUDY REPORT ON GOVERNMENT EFFORTS**
20 **TO COMBAT MORTGAGE FORECLOSURE RES-**
21 **CUE SCAMS AND LOAN MODIFICATION**
22 **FRAUD.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study of the current inter-agency
25 efforts of the Secretary of the Treasury, the Secretary of

1 Housing and Urban Development, the Attorney General,
2 and the Federal Trade Commission to crackdown on mort-
3 gage foreclosure rescue scams and loan modification fraud
4 in order to advise the Congress to the risks and
5 vulnerabilities of emerging schemes in the loan modifica-
6 tion arena.

7 (b) REPORT.—

8 (1) IN GENERAL.—The Comptroller General
9 shall submit a report to the Congress on the study
10 conducted under subsection (a) containing such rec-
11 ommendations for legislative and administrative ac-
12 tions as the Comptroller General may determine to
13 be appropriate in addition to the recommendations
14 required under paragraph (2).

15 (2) SPECIFIC TOPICS.—The report made under
16 paragraph (1) shall include—

17 (A) an evaluation of the effectiveness of
18 the inter-agency task force current efforts to
19 combat mortgage foreclosure rescue scams and
20 loan modification fraud scams;

21 (B) specific recommendations on agency or
22 legislative action that are essential to properly
23 protect homeowners from mortgage foreclosure
24 rescue scams and loan modification fraud
25 scams; and

1 (C) the adequacy of financial resources
2 that the Federal Government is allocating to—
3 (i) crackdown on loan modification
4 and foreclosure rescue scams; and
5 (ii) the education of homeowners
6 about fraudulent scams relating to loan
7 modification and foreclosure rescues.

8 **SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.**

9 (a) IN GENERAL.—Section 104(a) of the Helping
10 Families Save Their Homes Act of 2009 (division A of
11 Public Law 111–22) is amended—

12 (1) in paragraph (2), by striking “resulting”
13 and inserting “in each State that result”;

14 (2) in paragraph (3), by inserting “each State
15 for” after “modifications in”; and

16 (3) in paragraph (4), by inserting “in each
17 State” after “total number of loans”.

18 (b) CONFORMING AMENDMENT.—Section
19 104(b)(1)(A) of such Act is amended by adding at the end
20 the following sentence: “Not later than 60 days after the
21 date of the enactment of the Wall Street Reform and Con-
22 sumer Protection Act of 2009, the Comptroller of the Cur-
23 rency and the Director of the Office of Thrift Supervision
24 shall update such requirements to reflect amendments
25 made to this section by such Act.”.

1 **Subtitle I—Multifamily Mortgage**
2 **Resolution**

3 **SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PRO-**
4 **GRAM.**

5 (a) ESTABLISHMENT.—The Secretary of Housing
6 and Urban Development shall develop a program under
7 this subsection to ensure the protection of current and fu-
8 ture tenants and at-risk multifamily properties, where fea-
9 sible, based on criteria that may include—

10 (1) creating sustainable financing of such prop-
11 erties, that may take into consideration such factors
12 as—

13 (A) the rental income generated by such
14 properties; and

15 (B) the preservation of adequate operating
16 reserves;

17 (2) maintaining the level of Federal, State, and
18 city subsidies in effect as of the date of the enact-
19 ment of this Act;

20 (3) providing funds for rehabilitation; and

21 (4) facilitating the transfer of such properties,
22 when appropriate and with the agreement of owners,
23 to responsible new owners and ensuring affordability
24 of such properties.

1 (b) COORDINATION.—The Secretary of Housing and
2 Urban Development may, in carrying out the program de-
3 veloped under this section, coordinate with the Secretary
4 of the Treasury, the Federal Deposit Insurance Corpora-
5 tion, the Board of Governors of the Federal Reserve Sys-
6 tem, the Federal Housing Finance Agency, and any other
7 Federal Government agency that the Secretary considers
8 appropriate.

9 (c) DEFINITION.—For purposes of this section, the
10 term “multifamily properties” means a residential struc-
11 ture that consists of 5 or more dwelling units.

12 **Subtitle J—Study of Effect of**
13 **Drywall Presence on Foreclosures**

14 **SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON**
15 **FORECLOSURES.**

16 (a) STUDY.—The Secretary of Housing and Urban
17 Development, in consultation with the Secretary of the
18 Treasury, shall conduct a study of the effect on residential
19 mortgage loan foreclosures of—

20 (1) the presence in residential structures sub-
21 ject to such mortgage loans of drywall that was im-
22 ported from China during the period beginning with
23 2004 and ending at the end of 2007; and

1 (2) the availability of property insurance for
2 residential structures in which such drywall is
3 present.

4 (b) REPORT.—Not later than the expiration of the
5 120-day period beginning on the date of the enactment
6 of this Act, the Secretary of Housing and Urban Develop-
7 ment shall submit to the Congress a report on the study
8 conducted under subsection (a) containing its findings,
9 conclusions, and recommendations.

10 **Subtitle K—Home Affordable** 11 **Modification Program**

12 **SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM** 13 **GUIDELINES.**

14 (a) NET PRESENT VALUE INPUT DATA.—The Sec-
15 retary of the Treasury (in this section referred to as the
16 “Secretary”) shall revise the supplemental directives and
17 other guidelines for the Home Affordable Modification
18 Program of the Making Home Affordable initiative of the
19 Secretary of the Treasury, authorized under the Emer-
20 gency Economic Stabilization Act of 2008 (Public Law
21 110–343), to require each mortgage servicer participating
22 in such program to provide each borrower under a mort-
23 gage whose request for a mortgage modification under the
24 Program is denied with all borrower-related and mort-
25 gage-related input data used in any net present value

1 (NPV) analyses performed in connection with the subject
2 mortgage. Such input data shall be provided to the bor-
3 rower at the time of such denial.

4 (b) WEB-BASED SITE FOR NPV CALCULATOR AND
5 APPLICATION.—

6 (1) NPV CALCULATOR.—In carrying out the
7 Home Affordable Modification Program, the Sec-
8 retary shall establish and maintain a site on the
9 World Wide Web that provides a calculator for net
10 present value analyses of a mortgage, based on the
11 Secretary's methodology for calculating such value,
12 that mortgagors can use to enter information re-
13 garding their own mortgages and that provides a de-
14 termination after entering such information regard-
15 ing a mortgage of whether such mortgage would be
16 accepted or rejected for modification under the Pro-
17 gram, using such methodology.

18 (2) DISCLOSURE.—Such Web site shall also
19 prominently disclose that each mortgage servicer
20 participating in such Program may use a method for
21 calculating net present value of a mortgage that is
22 different than the method used by such calculator.

23 (3) APPLICATION.—The Secretary shall make a
24 reasonable effort to include on such World Wide
25 Web site a method for homeowners to apply for a

1 mortgage modification under the Home Affordable
2 Modification Program.

3 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,
4 COMPUTER MODEL, AND VARIABLES.—The Secretary
5 shall make publicly available, including by posting on a
6 World Wide Web site of the Secretary—

7 (1) the Secretary’s methodology and computer
8 model, including all formulae used in such computer
9 model, used for calculating net present value of a
10 mortgage that is used by the calculator established
11 pursuant to subsection (b); and

12 (2) all variables used in such net present value
13 analysis.

14 **Subtitle L—Making Home**
15 **Affordable Program**

16 **SEC. 9921. PUBLIC AVAILABILITY OF INFORMATION.**

17 (a) REVISIONS TO PROGRAM GUIDELINES.—The Sec-
18 retary of the Treasury (in this section referred to as the
19 “Secretary”) shall revise the guidelines for the Home Af-
20 fordable Modification Program of the Making Home Af-
21 fordable initiative of the Secretary of the Treasury, au-
22 thorized under the Emergency Economic Stabilization Act
23 of 2008 (Public Law 110–343), to provide that the data
24 being collected by the Secretary from each mortgage

1 servicer and lender participating in the Program is made
2 public in accordance with subsection (b).

3 (b) PUBLIC AVAILABILITY.—Data shall be made
4 available according to the following guidelines:

5 (1) Not more than 14 days after each monthly
6 deadline for submission of data by mortgage
7 servicers and lenders participating in the Program,
8 reports shall be made publicly available by means of
9 a World Wide Web site of the Secretary, and by sub-
10 mitting a report to the Congress, that shall includes
11 the following information:

12 (A) The number of requests for mortgage
13 modifications under the Program that the
14 servicer or lender has received.

15 (B) The number of requests for mortgage
16 modifications under the Program that the
17 servicer or lender has processed.

18 (C) The number of requests for mortgage
19 modifications under the Program that the
20 servicer or lender has approved.

21 (D) The number of requests for mortgage
22 modifications under the Program that the
23 servicer or lender has denied.

24 (2) Not more than 60 days after each monthly
25 deadline for submission of data by mortgage

1 servicers and lenders participating in the Program,
2 the Secretary shall make data tables available to the
3 public at the individual record level. The Secretary
4 shall issue regulations prescribing—

5 (A) the procedures for disclosing such data
6 to the public; and

7 (B) such deletions as the Secretary may
8 determine to be appropriate to protect any pri-
9 vacy interest of any mortgage modification ap-
10 plicant, including the deletion or alteration of
11 the applicant's name and identification number.

12 **TITLE VIII—FORECLOSURE**
13 **AVOIDANCE AND AFFORD-**
14 **ABLE HOUSING**

15 **SEC. 10001. EMERGENCY MORTGAGE RELIEF.**

16 (a) USE OF TARP FUNDS.—Using the authority
17 available under sections 101(a) and 115(a) of division A
18 of the Emergency Economic Stabilization Act of 2008 (12
19 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury
20 shall transfer to the Secretary of Housing and Urban De-
21 velopment \$3,000,000,000, and the Secretary of Housing
22 and Urban Development shall credit such amount to the
23 Emergency Homeowners' Relief Fund, which such Sec-
24 retary shall establish pursuant to section 107 of the Emer-
25 gency Housing Act of 1975 (12 U.S.C. 2706), as such

1 Act is amended by this section, for use for emergency
2 mortgage assistance in accordance with title I of such Act.

3 (b) REAUTHORIZATION OF EMERGENCY MORTGAGE
4 RELIEF PROGRAM.—Title I of the Emergency Housing
5 Act of 1975 is amended—

6 (1) in section 103 (12 U.S.C. 2702)—

7 (A) in paragraph (2)—

8 (i) by striking “have indicated” and
9 all that follows through “regulation of the
10 holder” and insert “have certified”;

11 (ii) by striking “(such as the volume
12 of delinquent loans in its portfolio)”; and

13 (iii) by striking “, except that such
14 statement” and all that follows through
15 “purposes of this title”; and

16 (B) in paragraph (4), by inserting “or
17 medical conditions” after “adverse economic
18 conditions”;

19 (2) in section 104 (12 U.S.C. 2703)—

20 (A) in subsection (b), by striking “, but
21 such assistance” and all that follows through
22 the period at the end and inserting the fol-
23 lowing: “. The amount of assistance provided to
24 a homeowner under this title shall be an
25 amount that the Secretary determines is rea-

1 sonably necessary to supplement such amount
2 as the homeowner is capable of contributing to-
3 ward such mortgage payment, except that the
4 aggregate amount of such assistance provided
5 for any homeowner shall not exceed \$50,000.”;

6 (B) in subsection (d), by striking “interest
7 on a loan or advance” and all that follows
8 through the end of the subsection and inserting
9 the following: “(1) the rate of interest on any
10 loan or advance of credit insured under this
11 title shall be fixed for the life of the loan or ad-
12 vance of credit and shall not exceed the rate of
13 interest that is generally charged for mortgages
14 on single-family housing insured by the Sec-
15 retary of Housing and Urban Development
16 under title II of the National Housing Act at
17 the time such loan or advance of credit is made,
18 and (2) no interest shall be charged on interest
19 which is deferred on a loan or advance of credit
20 made under this title. In establishing rates,
21 terms and conditions for loans or advances of
22 credit made under this title, the Secretary shall
23 take into account a homeowner’s ability to
24 repay such loan or advance of credit.”; and

1 (C) in subsection (e), by inserting after the
2 period at the end of the first sentence the fol-
3 lowing: “Any eligible homeowner who receives a
4 grant or an advance of credit under this title
5 may repay the loan in full, without penalty, by
6 lump sum or by installment payments at any
7 time before the loan becomes due and pay-
8 able.”;

9 (3) in section 105 (12 U.S.C. 2704)—

10 (A) by striking subsection (b);

11 (B) in subsection (e)—

12 (i) by inserting “and emergency mort-
13 gage relief payments made under section
14 106” after “insured under this section”;
15 and

16 (ii) by striking “\$1,500,000,000 at
17 any one time” and inserting
18 “\$3,000,000,000”;

19 (C) by redesignating subsections (c), (d),
20 and (e) as subsections (b), (c), and (d), respec-
21 tively; and

22 (D) by adding at the end the following new
23 subsection:

24 “(e) The Secretary shall establish underwriting
25 guidelines or procedures to allocate amounts made avail-

1 able for loans and advances insured under this section and
2 for emergency relief payments made under section 106
3 based on the likelihood that a mortgagor will be able to
4 resume mortgage payments, pursuant to the requirement
5 under section 103(5).”;

6 (4) in section 107—

7 (A) by striking “(a)”;

8 (B) by striking subsection (b);

9 (5) in section 108 (12 U.S.C. 2707), by adding
10 at the end the following new subsection:

11 “(d) COVERAGE OF EXISTING PROGRAMS.—The Sec-
12 retary shall allow funds to be administered by a State that
13 has an existing program that is determined by the Sec-
14 retary to provide substantially similar assistance to home-
15 owners. After such determination is made such State shall
16 not be required to modify such program to comply with
17 the provisions of this title.”;

18 (6) in section 109 (12 U.S.C. 2708)—

19 (A) in the section heading, by striking
20 “AUTHORIZATION AND”;

21 (B) by striking subsection (a);

22 (C) by striking “(b)”;

23 (D) by striking “1977” and inserting
24 “2011”;

1 (7) by striking sections 110, 111, and 113 (12
2 U.S.C. 2709, 2710, 2712); and

3 (8) by redesignating section 112 (12 U.S.C.
4 2711) as section 110.

5 **SEC. 10002. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD**
6 **STABILIZATION PROGRAM.**

7 Using the authority made available under sections
8 101(a) and 115(a) of division A of the Emergency Eco-
9 nomic Stabilization Act of 2008 (12 U.S.C. 5211(a),
10 5225(a)), the Secretary of the Treasury shall transfer to
11 the Secretary of Housing and Urban Development
12 \$1,000,000,000, and the Secretary of Housing and Urban
13 Development shall use such amounts for assistance to
14 States and units of general local government for the rede-
15 velopment of abandoned and foreclosed homes, in accord-
16 ance with the same provisions applicable under the second
17 undesignated paragraph under the heading “Community
18 Planning and Development—Community Development
19 Fund” in title XII of division A of the American Recovery
20 and Reinvestment Act of 2009 (Public Law 111–5; 123
21 Stat. 217) to amounts made available under such second
22 undesignated paragraph, except as follows:

23 (1) Notwithstanding the matter of such second
24 undesignated paragraph that precedes the first pro-

1 viso, amounts made available by this section shall re-
2 main available until expended.

3 (2) The 3rd, 4th, 5th, 6th, 7th, and 15th pro-
4 visos of such second undesignated paragraph shall
5 not apply to amounts made available by this section.

6 (3) Amounts made available by this section
7 shall be allocated based on a funding formula for
8 such amounts established by the Secretary in ac-
9 cordance with section 2301(b) of the Housing and
10 Economic Recovery Act of 2008 (42 U.S.C. 5301
11 note), except that—

12 (A) notwithstanding paragraph (2) of such
13 section 2301(b), the formula shall be estab-
14 lished not later than 30 days after the date of
15 the enactment of this Act;

16 (B) the Secretary may not establish any
17 minimum grant amount or size for grants to
18 States;

19 (C) the Secretary may establish a min-
20 imum grant amount for direct allocations to
21 units of general local government located within
22 a State, which shall not exceed \$1,000,000; and

23 (D) each State and local government re-
24 ceiving grant amounts shall establish proce-
25 dures to create preferences for the development

1 of affordable rental housing for properties as-
2 sisted with amounts made available by this sec-
3 tion.

4 (4) Paragraph (1) of section 2301(c) of the
5 Housing and Economic Recovery Act of 2008 shall
6 not apply to amounts made available by this section.

7 (5) Section 2302 of the Housing and Economic
8 Recovery Act of 2008 shall not apply to amounts
9 made available by this section.

10 (6) The fourth proviso from the end of such
11 second undesignated paragraph shall be applied to
12 amounts made available by this section by sub-
13 stituting “2013” for “2012”.

14 (7) Notwithstanding section 2301(a) of the
15 Housing and Economic Recovery Act of 2008, the
16 term “State” means any State of the United States,
17 the District of Columbia, the Commonwealth of
18 Puerto Rico, the Commonwealth of the Northern
19 Mariana Islands, Guam, the Virgin Islands, Amer-
20 ican Samoa, and other territory or possession of the
21 United States for purposes of this section and title
22 III of division B of such Act, as applied to amounts
23 made available by this section.

24 (8)(A) None of the amounts made available by
25 this section shall be distributed to—

1 (i) any organization which has been con-
2 victed for a violation under Federal law relating
3 to an election for Federal office; or

4 (ii) any organization which employs appli-
5 cable individuals.

6 (B) In this paragraph, the term “applicable in-
7 dividual” means an individual who—

8 (i) is—

9 (I) employed by the organization in a
10 permanent or temporary capacity;

11 (II) contracted or retained by the or-
12 ganization; or

13 (III) acting on behalf of, or with the
14 express or apparent authority of, the orga-
15 nization; and

16 (ii) has been convicted for a violation
17 under Federal law relating to an election for
18 Federal office.

19 **TITLE IX—NONADMITTED AND**
20 **REINSURANCE REFORM ACT**

21 **SEC. 10051. SHORT TITLE.**

22 This title may be cited as the “Nonadmitted and Re-
23 insurance Reform Act of 2009”.

1 **SEC. 10052. EFFECTIVE DATE.**

2 Except as otherwise specifically provided in this title,
3 this title shall take effect upon the expiration of the 12-
4 month period beginning on the date of the enactment of
5 this Act.

6 **Subtitle A—Nonadmitted Insurance**

7 **SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF**
8 **PREMIUM TAXES.**

9 (a) HOME STATE’S EXCLUSIVE AUTHORITY.—No
10 State other than the home State of an insured may require
11 any premium tax payment for nonadmitted insurance.

12 (b) ALLOCATION OF NONADMITTED PREMIUM
13 TAXES.—

14 (1) IN GENERAL.—The States may enter into a
15 compact or otherwise establish procedures to allocate
16 among the States the premium taxes paid to an in-
17 sured’s home State described in subsection (a).

18 (2) EFFECTIVE DATE.—Except as expressly
19 otherwise provided in such compact or other proce-
20 dures, any such compact or other procedures—

21 (A) if adopted on or before the expiration
22 of the 330-day period that begins on the date
23 of the enactment of this Act, shall apply to any
24 premium taxes that, on or after such date of
25 enactment, are required to be paid to any State

1 that is subject to such compact or procedures;
2 and

3 (B) if adopted after the expiration of such
4 330-day period, shall apply to any premium
5 taxes that, on or after January 1 of the first
6 calendar year that begins after the expiration of
7 such 330-day period, are required to be paid to
8 any State that is subject to such compact or
9 procedures.

10 (3) REPORT.—Upon the expiration of the 330-
11 day period referred to in paragraph (2), the NAIC
12 may submit a report to the Committee on Financial
13 Services and Committee on the Judiciary of the
14 House of Representatives and the Committee on
15 Banking, Housing, and Urban Affairs of the Senate
16 identifying and describing any compact or other pro-
17 cedures for allocation among the States of premium
18 taxes that have been adopted during such period by
19 any States.

20 (4) NATIONWIDE SYSTEM.—The Congress in-
21 tends that each State adopt nationwide uniform re-
22 quirements, forms, and procedures, such as an inter-
23 state compact, that provides for the reporting, pay-
24 ment, collection, and allocation of premium taxes for
25 nonadmitted insurance consistent with this section.

1 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
2 PORT.—To facilitate the payment of premium taxes
3 among the States, an insured’s home State may require
4 surplus lines brokers and insureds who have independently
5 procured insurance to annually file tax allocation reports
6 with the insured’s home State detailing the portion of the
7 nonadmitted insurance policy premium or premiums at-
8 tributable to properties, risks or exposures located in each
9 State. The filing of a nonadmitted insurance tax allocation
10 report and the payment of tax may be made by a person
11 authorized by the insured to act as its agent.

12 **SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY**
13 **INSURED’S HOME STATE.**

14 (a) HOME STATE AUTHORITY.—Except as otherwise
15 provided in this section, the placement of nonadmitted in-
16 surance shall be subject to the statutory and regulatory
17 requirements solely of the insured’s home State.

18 (b) BROKER LICENSING.—No State other than an in-
19 sured’s home State may require a surplus lines broker to
20 be licensed in order to sell, solicit, or negotiate non-
21 admitted insurance with respect to such insured.

22 (c) ENFORCEMENT PROVISION.—With respect to sec-
23 tion 10101 and subsections (a) and (b) of this section,
24 any law, regulation, provision, or action of any State that
25 applies or purports to apply to nonadmitted insurance sold

1 to, solicited by, or negotiated with an insured whose home
2 State is another State shall be preempted with respect to
3 such application.

4 (d) WORKERS' COMPENSATION EXCEPTION.—This
5 section may not be construed to preempt any State law,
6 rule, or regulation that restricts the placement of workers'
7 compensation insurance or excess insurance for self-fund-
8 ed workers' compensation plans with a nonadmitted in-
9 surer.

10 **SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER**
11 **DATABASE.**

12 After the expiration of the 2-year period beginning
13 on the date of the enactment of this Act, a State may
14 not collect any fees relating to licensing of an individual
15 or entity as a surplus lines broker in the State unless the
16 State has in effect at such time laws or regulations that
17 provide for participation by the State in the national in-
18 surance producer database of the NAIC, or any other
19 equivalent uniform national database, for the licensure of
20 surplus lines brokers and the renewal of such licenses.

21 **SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES**
22 **ELIGIBILITY.**

23 A State may not—

24 (1) impose eligibility requirements on, or other-
25 wise establish eligibility criteria for, nonadmitted in-

1 surers domiciled in a United States jurisdiction, ex-
2 cept in conformance with such requirements and cri-
3 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
4 mitted Insurance Model Act, unless the State has
5 adopted nationwide uniform requirements, forms,
6 and procedures developed in accordance with section
7 10101(b) of this title that include alternative nation-
8 wide uniform eligibility requirements; and

9 (2) prohibit a surplus lines broker from placing
10 nonadmitted insurance with, or procuring non-
11 admitted insurance from, a nonadmitted insurer
12 domiciled outside the United States that is listed on
13 the Quarterly Listing of Alien Insurers maintained
14 by the International Insurers Department of the
15 NAIC.

16 **SEC. 10105. STREAMLINED APPLICATION FOR COMMER-**
17 **CIAL PURCHASERS.**

18 A surplus lines broker seeking to procure or place
19 nonadmitted insurance in a State for an exempt commer-
20 cial purchaser shall not be required to satisfy any State
21 requirement to make a due diligence search to determine
22 whether the full amount or type of insurance sought by
23 such exempt commercial purchaser can be obtained from
24 admitted insurers if—

1 (1) the broker procuring or placing the surplus
2 lines insurance has disclosed to the exempt commer-
3 cial purchaser that such insurance may or may not
4 be available from the admitted market that may pro-
5 vide greater protection with more regulatory over-
6 sight; and

7 (2) the exempt commercial purchaser has sub-
8 sequently requested in writing the broker to procure
9 or place such insurance from a nonadmitted insurer.

10 **SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE**
11 **MARKET.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall conduct a study of the nonadmitted
14 insurance market to determine the effect of the enactment
15 of this subtitle on the size and market share of the non-
16 admitted insurance market for providing coverage typi-
17 cally provided by the admitted insurance market.

18 (b) CONTENTS.—The study shall determine and ana-
19 lyze—

20 (1) the change in the size and market share of
21 the nonadmitted insurance market and in the num-
22 ber of insurance companies and insurance holding
23 companies providing such business in the 18-month
24 period that begins upon the effective date of this
25 Act;

1 (2) the extent to which insurance coverage typi-
2 cally provided by the admitted insurance market has
3 shifted to the nonadmitted insurance market;

4 (3) the consequences of any change in the size
5 and market share of the nonadmitted insurance
6 market, including differences in the price and avail-
7 ability of coverage available in both the admitted
8 and nonadmitted insurance markets;

9 (4) the extent to which insurance companies
10 and insurance holding companies that provide both
11 admitted and nonadmitted insurance have experi-
12 enced shifts in the volume of business between ad-
13 mitted and nonadmitted insurance; and

14 (5) the extent to which there has been a change
15 in the number of individuals who have nonadmitted
16 insurance policies, the type of coverage provided
17 under such policies, and whether such coverage is
18 available in the admitted insurance market.

19 (c) CONSULTATION WITH NAIC.—In conducting the
20 study under this section, the Comptroller General shall
21 consult with the NAIC.

22 (d) REPORT.—The Comptroller General shall com-
23 plete the study under this section and submit a report to
24 the Committee on Financial Services of the House of Rep-
25 resentatives and the Committee on Banking, Housing, and

1 Urban Affairs of the Senate regarding the findings of the
2 study not later than 30 months after the effective date
3 of this Act.

4 **SEC. 10107. DEFINITIONS.**

5 For purposes of this subtitle, the following definitions
6 shall apply:

7 (1) ADMITTED INSURER.—The term “admitted
8 insurer” means, with respect to a State, an insurer
9 licensed to engage in the business of insurance in
10 such State.

11 (2) AFFILIATE.—The term “affiliate” means,
12 with respect to an insured, any entity that controls,
13 is controlled by, or is under common control with the
14 insured.

15 (3) AFFILIATED GROUP.—The term “affiliated
16 group” means any group of entities that are all af-
17 filiated.

18 (4) CONTROL.—An entity has “control” over
19 another entity if—

20 (A) the entity directly or indirectly or act-
21 ing through one or more other persons owns,
22 controls or has the power to vote 25 percent or
23 more of any class of voting securities of the
24 other entity; or

1 (B) the entity controls in any manner the
2 election of a majority of the directors or trust-
3 ees of the other entity.

4 (5) EXEMPT COMMERCIAL PURCHASER.—The
5 term “exempt commercial purchaser” means any
6 person purchasing commercial insurance that, at the
7 time of placement, meets the following requirements:

8 (A) The person employs or retains a quali-
9 fied risk manager to negotiate insurance cov-
10 erage.

11 (B) The person has paid aggregate nation-
12 wide commercial property and casualty insur-
13 ance premiums in excess of \$100,000 in the im-
14 mediately preceding 12 months.

15 (C)(i) The person meets at least one of the
16 following criteria:

17 (I) The person possesses a net
18 worth in excess of \$20,000,000, as
19 such amount is adjusted pursuant to
20 clause (ii).

21 (II) The person generates annual
22 revenues in excess of \$50,000,000, as
23 such amount is adjusted pursuant to
24 clause (ii).

1 (III) The person employs more
2 than 500 full time or full time equiva-
3 lent employees per individual insured
4 or is a member of an affiliated group
5 employing more than 1,000 employees
6 in the aggregate.

7 (IV) The person is a not-for-prof-
8 it organization or public entity gener-
9 ating annual budgeted expenditures of
10 at least \$30,000,000, as such amount
11 is adjusted pursuant to clause (ii).

12 (V) The person is a municipality
13 with a population in excess of 50,000
14 persons.

15 (ii) Effective on the fifth January 1
16 occurring after the date of the enactment
17 of this Act and each fifth January 1 occur-
18 ring thereafter, the amounts in subclauses
19 (I), (II), and (IV) of clause (i) shall be ad-
20 justed to reflect the percentage change for
21 such 5-year period in the Consumer Price
22 Index for All Urban Consumers published
23 by the Bureau of Labor Statistics of the
24 Department of Labor.

25 (6) HOME STATE.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term “home State”
3 means, with respect to an insured—

4 (i) the State in which an insured
5 maintains its principal place of business or,
6 in the case of an individual, the individ-
7 ual’s principal residence; or

8 (ii) if 100 percent of the insured risk
9 is located out of the State referred to in
10 subparagraph (A), the State to which the
11 greatest percentage of the insured’s tax-
12 able premium for that insurance contract
13 is allocated.

14 (B) AFFILIATED GROUPS.—If more than
15 one insured from an affiliated group are named
16 insureds on a single nonadmitted insurance con-
17 tract, the term “home State” means the home
18 State, as determined pursuant to subparagraph
19 (A), of the member of the affiliated group that
20 has the largest percentage of premium attrib-
21 uted to it under such insurance contract.

22 (7) INDEPENDENTLY PROCURED INSURANCE.—
23 The term “independently procured insurance”
24 means insurance procured directly by an insured
25 from a nonadmitted insurer.

1 (8) NAIC.—The term “NAIC” means the Na-
2 tional Association of Insurance Commissioners or
3 any successor entity.

4 (9) NONADMITTED INSURANCE.—The term
5 “nonadmitted insurance” means any property and
6 casualty insurance permitted to be placed directly or
7 through a surplus lines broker with a nonadmitted
8 insurer eligible to accept such insurance.

9 (10) NON-ADMITTED INSURANCE MODEL
10 ACT.—The term “Non-Admitted Insurance Model
11 Act” means the provisions of the Non-Admitted In-
12 surance Model Act, as adopted by the NAIC on Au-
13 gust 3, 1994, and amended on September 30, 1996,
14 December 6, 1997, October 2, 1999, and June 8,
15 2002.

16 (11) NONADMITTED INSURER.—The term
17 “nonadmitted insurer” means, with respect to a
18 State, an insurer not licensed to engage in the busi-
19 ness of insurance in such State.

20 (12) QUALIFIED RISK MANAGER.—The term
21 “qualified risk manager” means, with respect to a
22 policyholder of commercial insurance, a person who
23 meets all of the following requirements:

1 (A) The person is an employee of, or third
2 party consultant retained by, the commercial
3 policyholder.

4 (B) The person provides skilled services in
5 loss prevention, loss reduction, or risk and in-
6 surance coverage analysis, and purchase of in-
7 surance.

8 (C) The person—

9 (i)(I) has a bachelor's degree or high-
10 er from an accredited college or university
11 in risk management, business administra-
12 tion, finance, economics, or any other field
13 determined by a State insurance commis-
14 sioner or other State regulatory official or
15 entity to demonstrate minimum com-
16 petence in risk management; and

17 (II)(aa) has three years of experi-
18 ence in risk financing, claims adminis-
19 tration, loss prevention, risk and in-
20 surance analysis, or purchasing com-
21 mercial lines of insurance; or

22 (bb) has one of the following
23 designations:

24 (AA) a designation as a
25 Chartered Property and

1 Casualty Underwriter (in
2 this subparagraph referred
3 to as “CPCU”) issued by
4 the American Institute for
5 CPCU/Insurance Institute of
6 America;

7 (BB) a designation as
8 an Associate in Risk Man-
9 agement (ARM) issued by
10 the American Institute for
11 CPCU/Insurance Institute of
12 America;

13 (CC) a designation as
14 Certified Risk Manager
15 (CRM) issued by the Na-
16 tional Alliance for Insurance
17 Education & Research;

18 (DD) a designation as
19 a RIMS Fellow (RF) issued
20 by the Global Risk Manage-
21 ment Institute; or

22 (EE) any other des-
23 ignation, certification, or li-
24 cense determined by a State
25 insurance commissioner or

1 other State insurance regu-
2 latory official or entity to
3 demonstrate minimum com-
4 petency in risk management;

5 (ii)(I) has at least seven years of ex-
6 perience in risk financing, claims adminis-
7 tration, loss prevention, risk and insurance
8 coverage analysis, or purchasing commer-
9 cial lines of insurance; and

10 (II) has any one of the designa-
11 tions specified in subitems (AA)
12 through (EE) of clause (i)(II)(bb);

13 (iii) has at least 10 years of experi-
14 ence in risk financing, claims administra-
15 tion, loss prevention, risk and insurance
16 coverage analysis, or purchasing commer-
17 cial lines of insurance; or

18 (iv) has a graduate degree from an
19 accredited college or university in risk
20 management, business administration, fi-
21 nance, economics, or any other field deter-
22 mined by a State insurance commissioner
23 or other State regulatory official or entity
24 to demonstrate minimum competence in
25 risk management.

1 (13) PREMIUM TAX.—The term “premium tax”
 2 means, with respect to surplus lines or independently
 3 procured insurance coverage, any tax, fee, assess-
 4 ment, or other charge imposed by a government en-
 5 tity directly or indirectly based on any payment
 6 made as consideration for an insurance contract for
 7 such insurance, including premium deposits, assess-
 8 ments, registration fees, and any other compensation
 9 given in consideration for a contract of insurance.

10 (14) SURPLUS LINES BROKER.—The term “sur-
 11 plus lines broker” means an individual, firm, or cor-
 12 poration which is licensed in a State to sell, solicit,
 13 or negotiate insurance on properties, risks, or expo-
 14 sures located or to be performed in a State with
 15 nonadmitted insurers.

16 (15) STATE.—The term “State” includes any
 17 State of the United States, the District of Columbia,
 18 the Commonwealth of Puerto Rico, Guam, the
 19 Northern Mariana Islands, the Virgin Islands, and
 20 American Samoa.

21 **Subtitle B—Reinsurance**

22 **SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE** 23 **AND REINSURANCE AGREEMENTS.**

24 (a) CREDIT FOR REINSURANCE.—If the State of
 25 domicile of a ceding insurer is an NAIC-accredited State,

1 or has financial solvency requirements substantially simi-
2 lar to the requirements necessary for NAIC accreditation,
3 and recognizes credit for reinsurance for the insurer's
4 ceded risk, then no other State may deny such credit for
5 reinsurance.

6 (b) ADDITIONAL PREEMPTION OF
7 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
8 addition to the application of subsection (a), all laws, regu-
9 lations, provisions, or other actions of a State that is not
10 the domiciliary State of the ceding insurer, except those
11 with respect to taxes and assessments on insurance com-
12 panies or insurance income, are preempted to the extent
13 that they—

14 (1) restrict or eliminate the rights of the ceding
15 insurer or the assuming insurer to resolve disputes
16 pursuant to contractual arbitration to the extent
17 such contractual provision is not inconsistent with
18 the provisions of title 9, United States Code;

19 (2) require that a certain State's law shall gov-
20 ern the reinsurance contract, disputes arising from
21 the reinsurance contract, or requirements of the re-
22 insurance contract;

23 (3) attempt to enforce a reinsurance contract
24 on terms different than those set forth in the rein-

1 surance contract, to the extent that the terms are
2 not inconsistent with this subtitle; or

3 (4) otherwise apply the laws of the State to re-
4 insurance agreements of ceding insurers not domi-
5 ciled in that State.

6 **SEC. 10202. REGULATION OF REINSURER SOLVENCY.**

7 (a) DOMICILIARY STATE REGULATION.—If the State
8 of domicile of a reinsurer is an NAIC-accredited State or
9 has financial solvency requirements substantially similar
10 to the requirements necessary for NAIC accreditation,
11 such State shall be solely responsible for regulating the
12 financial solvency of the reinsurer.

13 (b) NONDOMICILIARY STATES.—

14 (1) LIMITATION ON FINANCIAL INFORMATION
15 REQUIREMENTS.—If the State of domicile of a rein-
16 surer is an NAIC-accredited State or has financial
17 solvency requirements substantially similar to the re-
18 quirements necessary for NAIC accreditation, no
19 other State may require the reinsurer to provide any
20 additional financial information other than the infor-
21 mation the reinsurer is required to file with its
22 domiciliary State.

23 (2) RECEIPT OF INFORMATION.—No provision
24 of this section shall be construed as preventing or
25 prohibiting a State that is not the State of domicile

1 of a reinsurer from receiving a copy of any financial
2 statement filed with its domiciliary State.

3 **SEC. 10203. DEFINITIONS.**

4 For purposes of this subtitle, the following definitions
5 shall apply:

6 (1) CEDING INSURER.—The term “ceding in-
7 surer” means an insurer that purchases reinsurance.

8 (2) DOMICILIARY STATE.—The terms “State of
9 domicile” and “domiciliary State” means, with re-
10 spect to an insurer or reinsurer, the State in which
11 the insurer or reinsurer is incorporated or entered
12 through, and licensed.

13 (3) REINSURANCE.—The term “reinsurance”
14 means the assumption by an insurer of all or part
15 of a risk undertaken originally by another insurer.

16 (4) REINSURER.—

17 (A) IN GENERAL.—The term “reinsurer”
18 means an insurer to the extent that the in-
19 surer—

20 (i) is principally engaged in the busi-
21 ness of reinsurance;

22 (ii) does not conduct significant
23 amounts of direct insurance as a percent-
24 age of its net premiums; and

1 (iii) is not engaged in an ongoing
2 basis in the business of soliciting direct in-
3 surance.

4 (B) DETERMINATION.—A determination of
5 whether an insurer is a reinsurer shall be made
6 under the laws of the State of domicile in ac-
7 cordance with this paragraph.

8 (5) STATE.—The term “State” includes any
9 State of the United States, the District of Columbia,
10 the Commonwealth of Puerto Rico, Guam, the
11 Northern Mariana Islands, the Virgin Islands, and
12 American Samoa.

13 **Subtitle C—Rule of Construction**

14 **SEC. 10301. RULE OF CONSTRUCTION.**

15 Nothing in this title or amendments to this title shall
16 be construed to modify, impair, or supersede the applica-
17 tion of the antitrust laws. Any implied or actual conflict
18 between this title and any amendments to this title and
19 the antitrust laws shall be resolved in favor of the oper-
20 ation of the antitrust laws.

21 **SEC. 10302. SEVERABILITY.**

22 If any section or subsection of this title, or any appli-
23 cation of such provision to any person or circumstance,
24 is held to be unconstitutional, the remainder of this title,

1 and the application of the provision to any other person
2 or circumstance, shall not be affected.

3 **TITLE X—INTEREST-BEARING**
4 **TRANSACTION ACCOUNTS AU-**
5 **THORIZED**

6 **SEC. 11001. INTEREST-BEARING TRANSACTION ACCOUNTS**
7 **AUTHORIZED.**

8 (a) REPEAL OF PROHIBITION ON PAYMENT OF IN-
9 TEREST ON DEMAND DEPOSITS.—

10 (1) FEDERAL RESERVE ACT.—Section 19(i) of
11 the Federal Reserve Act (12 U.S.C. 371a) is amend-
12 ed to read as follows:

13 “(i) [Repealed]”.

14 (2) HOME OWNERS’ LOAN ACT.—The first sen-
15 tence of section 5(b)(1)(B) of the Home Owners’
16 Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by
17 striking “savings association may not—” and all
18 that follows through “(ii) permit any” and inserting
19 “savings association may not permit any”.

20 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
21 tion 18(g) of the Federal Deposit Insurance Act (12
22 U.S.C. 1828(g)) is amended to read as follows:
23 “(g) [Repealed]”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect at the end of the 1-year
3 period beginning on the date of the enactment of this Act.

Passed the House of Representatives December 11,
2009.

Attest: LORRAINE C. MILLER,
Clerk.